DOCUMENT RESUME

ED 156 905	08	CE 017 292

TITLE The Handbook: A Vocational Education Legislative Reference. Federal Laws and Regulations Affecting Vocational Education.
INSTITUTION Mariscal and Co., Los Angeles, Calif.
SPONS AGENCY Bureau of Occupational and Adult Education (DHEW/OE), Washington, D.C.
PUB DATE Jan 78
NOTE 610p.

EDRS PRICE MF-$1.16 HC-$32.81 Plus Postage.
DESCRIPTORS Civil Rights Legislation; *Educational Legislation; *Educational Policy; Educational Programs; *Federal Legislation; Federal Programs; Federal Regulation; Federal State Relationship; *Government School Relationship; Guides; Handicapped; Policy Formation; Rehabilitation; *Vocational Education
IDENTIFIERS United States; *Vocational Education Act 1963

ABSTRACT

To assist administrators, researchers, and evaluators in better understanding and implementing the Vocational Education Act of 1963, this booklet brings together the provisions of the Act, the regulations, selected provisions from related laws, significant policy, and statements based on public hearings issues. Its format of columns that clearly indicate legislation, rules, and regulations, their citation numbers, and "see also" references to other parts of the text is designed for quick and comprehensive reference use. The other legislation besides the Vocational Education Act includes the following: General Education Provisions Act, Education of the Handicapped Act, Comprehensive Employment and Training Act of 1973, Civil Rights Act of 1964 Title VI, Rehabilitation Act of 1973 Title V, and Education Amendments of 1972 Title IX. Five appendixes are included dealing with the regulations of the Vocational Education Act: (1) the preamble to the final regulations, giving their effective date and rule-making history; (2) critical policy issues raised by their enactment; (3) notice of intent to issue regulations pursuant to the Act; (4) specific questions and answers on the implementation of the Act; and (5) comments and suggestions on the proposed rules, followed by responses indicating reasons for acceptance or rejection of the recommendations. (ELG)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED156905

The *Handbook:* *A Vocational Education Legislative Reference*

Federal Laws and Regulations Affecting Vocational Education

JANUARY 1978

CE 017 292

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Joseph A. Califano, Jr., *Secretary*
Mary F. Berry, *Assistant Secretary for Education*
Office of Education
Ernest L. Boyer, *Commissioner*

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

CE

Spring, 1978

Dear Colleague:

"The Handbook: A Vocational Education Legislative Reference" has been developed to assist administrators, planners, evaluators, and researchers to better understand and implement the Vocational Education Act of 1963, as amended (P.L. 94-482). It was carefully designed in a format which would facilitate quick and handy reference to the provisons of the Act and the regulations as well as other related statutes and background information.

At this time we are sending multiple copies to State Directors of Vocational Education for their transmittal to members of the planning groups stipulated in Section 107 of the Act. A limited number of other copies will also be sent to selected mailing lists. We have recommended that additional copies be available for sale by the Superintendent of Documents, Government Printing Office, since "The Handbook" will not be available from the Bureau of Occupational and Adult Education.

Sincerely,

Charles H. Buzzell
Acting Deputy Commissioner
Bureau of Occupational and
Adult Education

INTRODUCTION

The effective implementation of a Federal statute, such as the Vocational Education Act of 1963, (P.L. 94-482) calls for a high degree of understanding on the part of administrators, planners, evaluators and researchers who are concerned with vocational education. On the surface this may appear a simple task. However, like many statutes, the Vocational Education Act must be implemented in relation to other law and regulations. This calls for frequent reference to a sometimes confusing variety of laws, regulations and agency policy statements, as well as an understanding of Congressional intent.

This legislative reference handbook is designed to facilitate just such an understanding of the Vocational Education Act. It brings together the provisions of the Act, the regulations, selected provisions from other related statutes, significant policy, and statements based on public hearings issues in a format intended for quick and comprehensive reference. Ultimately, we hope it will facilitate that essential understanding of the Vocational Education Act required for compliance with the law and the effective administration of vocational education programs.

While precautionary measures were taken by the contractor and the U.S. Office of Education to insure the accuracy of this handbook, technical errors still may occur. However, these technical errors should not alter the meaning of the content.

This document which was developed under a contract with Mariscal and Company was conceptualized and designed by the Bureau of Occupational and Adult Education Planning Office under the Direction of Dr. Leroy A. Cornelsen and his staff. The Project Monitor was Mrs. Judy Jaffe, Education Program Specialist, Planning Office, BOAE.

CONTENTS

Page

INTRODUCTION.. iii

GUIDE TO USAGE OF LEGISLATION/RULES AND REGULATIONS INDEX............. vi

LEGISLATION/RULES AND REGULATIONS GUIDE.............................. vii

GUIDE TO USAGE OF TEXT.. xxix

VOCATIONAL EDUCATION ACT OF 1963.................................... 1

LEGISLATION/RULES AND REGULATIONS RELATING TO VOCATIONAL EDUCATION...... 267

- General Education Provisions Act.................................. 267
- Education of the Handicapped Act.................................. 308
- Comprehensive Employment and Training Act of 1973.................. 357
- Civil Rights Act of 1964 Title VI.................................. 385
- Education Amendments of 1972 Title IX.............................. 405
- Rehabilitation Act of 1973 Title V................................. 432

VOCATIONAL EDUCATION APPENDIXES...................................... 456

- Preamble to Final Vocational Education Regulations.................. 456
- Critical Issues.. 458
- Notice of Intent To Issue Regulations.............................. 462
- Questions and Answers.. 486
- Comments and Responses... 494

GUIDE TO USAGE OF LEGISLATION/RULES AND REGULATIONS INDEX

The Vocational Education Handbook includes provisions of the Vocational Education Act, the regulations, selected provisions from other related statutes and applicable regulations. The Legislative/Rules and Regulations Index lists every act, law and regulation cited in the text of this handbook.

Under each act, laws are listed by their title and United States Code in the order in which they appear in the text. Every regulation is listed by its section number and title. The page number for each act, law and regulation is listed for quick reference.

LEGISLATION/RULES AND REGULATIONS INDEX

Page

VOCATIONAL EDUCATION ACT OF 1963 1

20 USC 2301 DECLARATION OF PURPOSE 1
  Subpart 1 - State Administration 1
    Sec.
    104.1 Scope. 1
    104.2 Purpose. 1
    104.3 Applicability of General Education Provisions Regulations. 3

20 USC 2302 AUTHORIZATION OF APPROPRIATIONS 4

20 USC 2303 ALLOTMENTS AMONG STATES 5
  Subpart 2 - Indian Tribes 5
  Contract Program for Indian Tribes and Indian Organizations 5
    Sec.
    105.201 Purpose. 5
    105.202 Applicability of the Indian Self-Determination Act of 1975. 5
    105.203 Definitions. 6
    105.204 Assistance contracts. 7
    105.205 Eligible applicants. 7
    105.206 Applications for assistance contracts. 8
    105.207 Review for duplication of effort. 8
    105.208 No cost sharing. 8
    105.209 Duration of awards. 8
    105.210 Final reports. 9
    105.211 Technical review criteria. 9
    105.212 Additional factors for declining to contract. 13
    105.213 Hearing by the Commissioner after declining to enter into a contract. 14
    105.214 Remaining funds. 14

20 USC 2304 STATE ADMINISTRATION 15
    Sec.
    104.4 Cross reference to definitions. 15
  State Board 15
    104.31 Establishment of State board. 15
    104.32 Responsibilities of the State board. 15
    104.33 Delegation of functions. 16
    104.34 State administration and leadership. 17

Page

Full-Time Personnel and Functions to Eliminate Sex Discrimination and Sex Stereotyping 17
Sec.
104.71 Scope. 17
104.72 Selection of full-time personnel to eliminate sex discrimination and sex stereotyping. 17
104.73 Definitions. 18
104.74 Funds for full-time personnel and functions. 19
104.75 Functions of full-time personnel. 19
104.76 Studies to carry out functions. 21
104.171 Certification of plans. 21

20 USC 2305 STATE AND LOCAL ADVISORY COUNCILS 26
State Advisory Council 26
Sec.
104.91 Establishment and certification. 26
104.92 Membership. 27
104.93 Functions and responsibilities. 31
104.94 Meetings and rules. 33
104.95 Staff and services. 33
104.96 Fiscal control. 34
104.97 Annual evaluation report. 35
Local Advisory Councils 37
104.111 Establishment of local advisory councils. 37
104.112 Duties of local advisory councils. 38

20 USC 2306 GENERAL APPLICATION 39
General Application 39
Sec.
104.141 Requirement for filing a general application. 39
104.182 Procedures to assure compliance with the general application. 46

20 USC 2307 FIVE-YEAR STATE PLANS 48
Development of Five-Year State Plan 48
Sec.
104.161 Submission of five -year State plan. 48
104.162 Representation required in the development of the five-year State plan. 48
104.163 Meetings of participating representatives. 50
104.164 State board adoption of the five-year State plan. 50
104.165 Public hearings on the five-year State plan. 51
104.181 Content of five-year State plan. 52
104.183 Assessment of employment opportunities. 53
104.184 Goals to meet employment needs. 53
104.185 Funding to meet employment needs. 54

Page

Sec.
104.186 Funding to meet program (purpose) needs. 56
104.187 Policies for eradicating sex discrimination. 57
104.188 Coordination between manpower training programs and vocational education programs. 58
Hearings Before the Commissioner on Agency or Council Challenges to the Five-Year State Plan or the Annual Program Plan 58
104.281 Opportunity for a hearing. 58
104.282 Appeal to the Commissioner. 59
104.283 Hearing. 60
104.284 Prehearing. 61
104.285 Right to counsel, witnesses, cross-examination. 61
104.286 Evidence and standard of evidence. 62
104.287 Determinations to be made by the hearing officer. 62
104.288 Commissioner's decision. 64
104.289 Appeal by State board, or agency to the court of appeals. 64
104.315 Expenditures for programs in secondary schools. 65

20 USC 2308 ANNUAL PROGRAM PLANS AND ACCOUNTABILITY REPORTS 66
Development of Annual Program Plan and Accountability Report 66
Sec.
104.202 Due date of annual program plan. 66
104.203 Due date of annual accountability report. 66
104.204 Representation required in the development of the annual program plan and accountability report. 66
104.205 Meetings of participating representatives. 67
104.206 State board adoption of the annual program plan and accountability report. 67
104.207 Public hearing on the annual program plan and accountability report. 68
104.221 Content of annual program plan for fiscal year 1978. 69
104.222 Content of annual program plans for the fiscal years following 1978. 70
104.241 Content of the accountability report. 71

20 USC 2309 SUBMISSION OF PLANS; WITHHOLDING AND JUDICIAL REVIEW 73
Approval of Five-Year State Plan and Annual Program Plan and Accountability Report 73
Sec.
104.261 Conditions for approval of five-year State plan. 73
104.262 Conditions for approval of annual program plan and accountability report. 74
104.263 Notice of approval or disapproval. 75

Page

Withholding of Approval of Plan 75
Sec.
104.271 Disapproval of plan. 75
Suspension and Termination of Payments for Noncompliance 76
104.291 Suspension and termination of payments for noncompliance. 76
Appeal to the Courts 77
104.202 Appeal by State board on withholding of approval of State plan. 77
104.293 Appeal by eligible recipients to the court of appeals. 77

20 USC 2310 NATIONAL PRIORITY PROGRAMS 80
Sec.
104.303 Federal share of expenditures--national priority programs. 80
104.304 Allowable expenditures for vocational education for national priority programs. 82
Minimum Percentages 82
104.311 Percentage requirements with respect to State distribution of Federal funds. 82
104.312 Minimum percentage for the handicapped. 82
104.313 Minimum percentage for the disadvantaged. 83
104.314 Minimum percentage of postsecondary and adult. 85

20 USC 2311 PAYMENTS TO STATES 86
Fiscal Requirements 86
Federal Share 86
Sec.
104.301 Application of Federal requirements. 86
104.302 Federal share of expenditures--annual program plan. 87
104.305 Federal share of expenditures--100 percent payment. 88
104.306 Federal share of expenditures--State administration. 88
104.307 Federal share of expenditures--local administration. 90
Maintenance of Effort 93
104.321 Maintenance of fiscal effort at the State level.
104.322 Withholding of payments. 93
104.323 Five percent rule. 93
104.325 Unusual circumstance rule. 94
104.325 Maintenance of fiscal effort at the local level. 95
104.326 Withholding of payments. 95
104.327 Exceptions. 95
104.328 Maintenance of fiscal effort by postsecondary educational institutions. 96
104.329 Withholding of payments. 96
104.330 Exceptions. 96

Page

20 USC 2312 FEDERAL AND STATE EVALUATIONS 97
State Evaluation 97
Sec.
104.401 Purpose. 97
104.402 Evaluation by State board. 97
104.403 Use of results of evaluation. 98
104.404 Special data on completers and leavers. 99
104.405 Assurance of compatible data. 101

20 USC 2330 AUTHORIZATION OF GRANTS AND USES OF FUNDS 102
Subpart 2--Basic Grant 102
General Purposes
Sec.
104.501 Authorization of grants. 102
104.502 Use of funds under the basic grant. 102
Vocational Education Programs 104
104.511 Use of funds. 104
104.512 Vocational instruction. 105
104.513 Activities of vocational education student organizations. 107
104.514 Vocational instruction under contract. 108
104.515 Apprenticeship programs. 110
Work-Study Programs 112
104.521 Use of funds. 112
104.522 Policy and procedures for work-study programs. 112
Construction of Area Vocational Education School Facilities 113
104.551 Use of funds. 113
104.553 Construction requirements. 113
Provision of Stipends. 114
104.571 Use of funds. 114
104.572 Restrictions on payment of stipends. 115
104.573 Application for payment of stipends by eligible recipients. 115
104.574 Rates for stipends 116
Placement Services for Students who have Successfully Completed Vocational Education Programs 116
104.581 Use of funds. 116
104.582 Restrictions on placement services. 117
104.583 Application for funds by eligible recipients. 117
Industrial Arts 118
104.591 Use of funds. 118
Support Services for Women 118
104.601 Use of funds. 118
104.602 Types of support services. 118
104.603 Support to increase number of women instructors. 120

Page

Day Care Services for Children of Students 120
Sec.
104.611 Use of funds. 120
104.612 Day care services. 121
Vocational Education Programs for Displaced Homemakers and Other Special Groups 121
104.621 Use of funds. 121
104.622 Scope of programs. 122
Construction and Operation of Residential Vocational Schools 123
104.631 Use of funds. 123
104.634 Construction requirements. 123

20 USC 2331 WORK STUDY PROGRAMS 124
Sec.
104.523 Requirements of work-study programs. 124

20 USC 2332 COOPERATIVE VOCATIONAL EDUCATIONS PROGRAMS 127
Cooperative Vocational Education Programs 127
Sec.
104.531 Use of funds. 127
104.532 Assurances in five-year State plan. 127
104.533 Students in nonprofit private schools. 129

20 USC 2333 ENERGY EDUCATION 132
Energy Education 132
Sec.
104.541 Use of funds. 132
104.542 Applications by post-secondary educational institutions. 132
104.543 Solar energy. 133

20 USC 2334 RESIDENTIAL VOCATIONAL SCHOOLS 134
Sec.
104.632 Residential vocational schools. 134
104.633 Special considerations for residential vocational schools. 134

20 USC 2350 AUTHORIZATION OF GRANTS AND USES OF FUNDS 135
Subpart 3--Program Improvement and Supportive Services 135
Sec.
104.701 Authorization of grants.
Program Improvement 135
104.702 Purpose.
104.703 Research coordinating unit. 136

Page

20 USC 2351 RESEARCH 137
Sec.
104.704 Contract requirements. 137
104.705 Use of funds for research programs. 138

20 USC 2352 EXEMPLARY AND INNOVATIVE PROGRAMS 140
Sec.
104.706 Use of funds for exemplary and innovative programs. 140
104.707 Disposition of exemplary and innovative programs. 142

20 USC 2353 CURRICULUM DEVELOPMENT 143
Sec.
104.708 Use of funds for curriculum development programs. 143

20 USC 2354 VOCATIONAL GUIDANCE AND COUNSELING 144
Vocational Guidance and Counseling 144
Sec.
104.761 Purpose. 144
104.762 Conformity with five-year State plan. 144
104.763 Kinds of programs, services, and activities. 144
104.764 Special emphasis. 146

20 USC 2355 VOCATIONAL EDUCATION PERSONNEL TRAINING 147
Vocational Education Personnel Training 147
Sec.
104.771 Purpose.
104.772 Conformity with five-year State plan. 147
104.773 Eligible participants. 148
104.774 Types of training. 148
104.775 Grants or contracts. 150
104.776 Stipends to trainees. 150

20 USC 2356 GRANTS TO ASSIST IN OVERCOMING SEX BIAS 152
Grants to Overcome Sex Bias and Sex Stereotyping
Sec.
104.791 Purpose. 152
104 792 Conformity with five-year State plan. 152
104.793 Types of projects. 153

20 USC 2370 SPECIAL PROGRAMS FOR THE DISADVANTAGED 154
Subpart 4--Special Programs for the Disadvantaged 154
104.801 Grants to States for Special programs for the disadvantaged. 154
104.802 Use of funds. 154
104.803 Students in nonprofit private schools. 155
104.804 Criteria of need and eligibility. 155

Page

20 USC 2380 CONSUMER AND HOMEMAKING EDUCATION 157
Subpart 5--Consumer and Homemaking Education 157
Sec.
104.901 Grants to States for consumer and homemaking Education 157
104.902 Use of funds. 157
104.903 Programs in consumer and homemaking education. 157
104.904 Purpose of programs in consumer and homemaking education. 158
104.905 Ancillary services. 160
104.906 Federal share. 161

20 USC 2390 FEDERAL ADMINISTRATION 161

20 USC 2391 VOCATIONAL EDUCATION DATA AND OCCUPATIONAL INFORMATION DATA SYSTEMS 168
Vocational Education Information Data Systems 168
Sec.
104.116 Vocational education data system. 168
National and State Occupational Information Coordinating Committees. 169
104.121 Establishment of National Occupational Information Coordinating Committees. 169
104.122 Requirement to establish State occupational information coordinating committees. 169
104.123 Duties of the State occupational information coordinating committee. 170

20 USC 2392 NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION 172

20 USC 2401 PROGRAM IMPROVEMENT 177
General
Sec.
105.1 Scope. 177
105.2 Purpose. 177
105.3 Definitions. 178
105.4 Applicability of General Education Provisions Regulations. 178
105.5 Applicability of technical review criteria. 178
Subpart 1--Program Improvement 179
105.101 Purpose. 179
105.102 National center for research in vocational education. 179
105.103 Armed services curriculum materials. 181
105.104 Authorized activities. 182
105.105 Eligible applicants. 182

Page

Sec.
105.106 Cost sharing. 183
105.107 Duration of project support. 183
105.108 Improved teaching techniques or curriculum materials. 183
105.109 Exemplary and innovative projects. 184
105.110 Technical review criteria. 184

20 USC 2402 TRAINING AND DEVELOPMENT PROGRAMS FOR VOCATIONAL EDUCATION PERSONNEL 190
Subpart 3--Training and Development Programs for Vocational Education Personnel 190
Leadership Development Award Program 190
Sec.
105.301 Purpose. 190
105.302 Leadership development awards. 190
105.303 Equitable geographical distribution. 191
105.304 Eligibilty of individuals. 191
105.305 Application procedures. 192
105.306 Stipends to individuals. 193
105.307 Conditions for continued eligibility. 193
105.308 Payment conditioned on appropriation. 194
105.309 Technical review criteria. 195
105.310 Assignment to approved institution. 197
105.311 Institutional eligibility and approval. 198
105.312 Institutional allowance. 199
Vocational Education Certification Fellowship Program 200
105.431 Purpose. 200
105.432 Awards to two categories of fellows. 201
105.433 Fellowship period. 202
105.434 Application procedures. 202
105.435 Equitable geographical distribution. 203
105.436 Stipend to fellows. 203
105.437 Conditions for continued eligibility. 204
105.438 Payment conditioned on appropriation. 205
105.439 Institutional allowance. 205
105.440 Institutional eligibility and approval. 206
105.441 Teaching fields in need of additional teachers. 207
105.442 Content of application. 207
105.443 Technical review criteria. 209

20 USC 2411 STATEMENT OF FINDINGS 213
Subpart 5--Bilingual Vocational Education
Bilingual Vocational Training Program 213
Sec.
105.601 Purpose. 213
105.607 Additional application review factors. 213

Page

Sec.
105.617 Additional application review factors. 214
105.627 Additional application review factors. 214

20 USC 2412 GENERAL RESPONSIBILITIES OF THE COMMISSIONER 214

20 USC 2413 AUTHORIZATION OF APPROPRIATIONS 215

20 USC 2414 AUTHORIZATION OF GRANTS 216
Sec.
105.603 Eligible applicants. 216
105.604 Applications for grants or contracts. 217

20 USC 2415 USE OF FEDERAL FUNDS 218
Sec.
105.602 Eligible programs. 218

20 USC 2416 AUTHORIZATION OF GRANTS FOR INSTRUCTOR TRAINING PROGRAMS 219
Bilingual Vocational Instructor Training Program 219
Sec.
105.611 Purpose. 219
105.612 Eligible programs. 220
105.613 Eligible applicants. 221

20 USC 2417 USE OF FEDERAL FUNDS 221

20 USC 2418 AUTHORIZATION OF GRANTS FOR DEVELOPMENT OF INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES 222
Bilingual Vocational Instructional Materials, Methods, and Techniques Program 222
Sec.
105.621 Purpose. 222
105.623 Eligible applicants. 222

20 USC 2419 USE OF FEDERAL FUNDS 223
Sec.
105.622 Eligible programs. 223

20 USC 2420 APPLICATIONS 224
Sec.
105.605 Review of applications. 224
105.606 Technical review criteria. 224
105.614 Applications for grants or contracts. 228
105.615 Review of applications. 230
105.616 Technical review criteria. 231
105.624 Applications for grants or contracts. 234

Page

Sec.
105.625 Review of applciations. 235
105.626 Technical review criteria. 236

20 USC 2421 APPLICATION APPROVAL BY THE COMMISSIONER 240

20 USC 2441 PURPOSE 241
Subpart 4--Emergency Assistance for Remodeling and Renovating of Vocational Education Facilities. 241
Sec.
105.501 Purpose. 241

20 USC 2442 AUTHORIZATION OF APPROPRIATIONS 242

20 USC 2443 APPLICATIONS 242
Sec.
105.502 Eligible applicants. 242
105.503 Content of applications. 243
105.504 Submission of applications through the State board. 245
105.505 Technical review criteria. 245
105.506 Payments to local educational agencies. 247
105.507 Construction requirements. 248

20 USC 2444 PAYMENT 249

20 USC 2461 DEFINITIONS 250
Sec.
104.552 Types of facilities. 250
104.592 Industrial arts programs. 251
Appendix A 252
Definitions 252

GENERAL EDUCATION PROVISIONS ACT 267

20 USC 1225 AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS 267
Sec.
100a.55 Obligation by recipients. 267
100b.55 Obligation by recipients. 268

20 USC 1231b.2 REVIEW OF APPLICATIONS 268

20 USC 1231c TECHNICAL ASSISTANCE 269

20 USC 1231e USE OF FUNDS WITHHELD FOR FAILURE TO COMPLY WITH OTHER PROVISIONS OF FEDERAL LAW 270

Page

20 USC 1232a PROHIBITION AGAINST FECERAL CONTROL OF EDUCATION 270

20 USC 1232b LABOR STANDARDS 271

20 USC 1232c ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS 271

Subpart B--Applications 273
Sec.
100a.15 Applications for grants or contracts. 273
100a.16 Project description. 273
100a.17 Administrative information. 273
100a.18 Designation and certification of agency to administer the project. 274
100a.19 Cooperative arrangements. 274
100a.20 Effective date of approved project. 274
100a.26 Review of applications. 274
100a.27 Disposition of applications. 275
100a.28 Amendments. 276
100a.29 Budget revisions and minor deviations. 276
100a.30 Service contracts. 278
100a.31 Preapplications. 278
Subpart B--State Plans 279
100b.36 Governor's comments. 279
100b.29 Budget revisions and minor deviations. 279
100b.35 Effective dates of applications, plans, and amendments. 279
100a.495 Termination and suspension for cause. 280
100b.495 Termination of program. 281

20 USC 1232d PAYMENTS 281

20 USC 1232f RESPONSIBILITY OF STATES TO FURNISH INFORMATION 282

20 USC 1232g PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS 283
Subpart A--General 288
Sec.
99.1 Applicability of part. 288
99.2 Purpose. 288
99.3 Definitions. 288
99.4 Student rights. 291
99.5 Formulation of institutional policy and procedures. 292
99.6 Annual notification of rights. 293
99.7 Limitations on waivers. 293
99.8 Fees. 294

Page

Subpart B--Inspection and Review of Education Records 294
Sec.
99.11 Right to inspect and review education records. 294
99.12 Limitations on right to inspect and review. education records at the postsecondary level. 295
99.13 Limitation on destruction of education records. 295
Subpart C--Amendment of Education Records 296
99.20 Request to amend education records. 296
99.21 Right to a hearing. 296
99.22 Conduct of the hearing. 297
Subpart D--Disclosure of Personally identifiable Information From Education Records 297
99.30 Prior consent for disclosure required. 297
99.31 Prior consent for disclosure not required. 298
99.32 Record of disclosures required to be maintained. 299
99.33 Limitation on redisclosure. 300
99.34 Conditions for disclosure to officials of other schools and school systems. 300
99.35 Disclosure to certain Federal and State officials for Federal program purposes. 301
99.36 Conditions for disclosure in health and safety emergencies. 301
99.37 Conditions for disclosure of directory information. 302
Subpart E--Enforcement.
99.60 Office and review board. 302
99.61 Conflict with State or local law. 302
99.62 Reports and records. 303
99.63 Complaint procedure. 303
99.64 Termination of funding. 303
99.65 Hearing procedures. 304
99.66 Hearing before Panel or a hearing officer. 304
99.67 Initial decision; final decision. 304

20 USC 1232h PROTECTION OF PUPIL RIGHTS 305

20 USC 1232 LIMITATION ON WITHHOLDING OF FEDERAL FUNDS 305

EDUCATION OF THE HANDICAPPED ACT 307

20 USC 1412 ELIGIBILITY 307
Sec.
121a.11 Public agency. 309
Annual Program Plans - General. 309
121a.111 Condition of Assistance. 309
121a.110 Contents of plan. 309
121a.120 Public participation. 309
121a.121 Right to a free appropriate public education. 310
121a.122 Timelines and ages for free appropriate public education. 310

Page

Sec.

121a.123 Full educational opportunity goal. 311
121a.124 Full Educational opportunity goal--data requirements. 311
121a.125 Full educational opportunity goal--timetable. 312
121a.126 Full educational opportunity goal--facilities, personnel, and services. 312
121a.127 Priorities. 313
121a.128 Identification, location, and evaluation of handicapped children. 313
121a.129 Confidentiality of personally identifiable information. 314
121a.130 Individualized education programs. 314
121a.131 Procedural safeguards. 315
121a.132 Least restrictive environment. 315
121a.133 Protection in evaluation procedures. 315
121a.134 Responsibility of State educational agency for all educational programs. 315
121a.135 Monitoring procedures. 315
121a.136 Implementation procedures--State educational agency. 316
121a.137 Procedures for consultation. 316

Public Participation

121a.280 Public hearings before adopting an annual program Plan. 316
121a.281 Notice. 316
121a.282 Opportunity to participate: comment period. 316
121a.283 Review of public comments before adopting plan. 317
121a.284 Publication and availability of approved plan. 317
Subpart C--Services 317
Free Appropriate Public Education 317
121a.300 Timelines for free appropriate public education. 317
121a.301 Free appropriate public education--methods and payments. 318
121a.302 Residential placement. 318
121a.303 Proper functioning of hearing aids. 318
121a.304 Full educational opportunity goal. 318
121a.305 Program options. 319
121a.306 Nonacademic services. 319
121a.307 Physical education. 319
Priorities in the Use of Part B Funds 320
121a.320 Definitions of "first priority children" and "second priority children."
Individualized Education Programs 320
121a.341 State educational agency responsibility. 320
121a.342 When individualized education programs must be in effect. 320

Page

Sec.
121a.343 Meetings. 321
121a.344 Participants in meetings. 321
121a.345 Parent participation. 322
121a.346 Content of individualized education program. 322
121a.349 Individualized education program--accountability. 323
Handicapped Children in Private Schools Placed or Referred by Public Schools 323
121a.403 Placement of children by parents. 323
Protection in Evaluation Procedures 323
121a.530 General.
121a.531 Preplacement evaluation. 323
121a.532 Evaluation procedures. 323
121a.533 Placement procedures. 324
121a.534 Reevaluation. 325
Least Restrictive Environment 325
Sec.
121a.550 General. 325
121a.551 Continuum of alternative placements. 325
121a.552 Placements. 325
121a.553 Nonacademic settings. 326
121a.554 Children in public or private institutions. 326
121a.555 Technical assistance and training activities. 326
121a.556 Monitoring activities. 326

Confidentiality of Information

Sec.
121a.560 Definitions. 327
121a.561 Notice to parents. 327
121a.562 Access rights. 327
121a.563 Record of access. 328
121a.564 Records on more than one child. 328
121a.565 List of types and locations of information. 328
121a.566 Fees. 328
121a.567 Amendment of records at parent's request. 328
121a.568 Opportunity for a hearing. 329
121a.569 Result of hearing. 329
121a.570 Hearing procedures. 329
121a.571 Consent. 329
121a.572 Safeguards. 330
121a.573 Destruction of information. 330
121a.574 Children's rights. 330
121a.575 Enforcement. 331
121a.576 Office of Education. 331
Subpart F -- State Administration. 331
State Educational Agency Responsibilities: General 331
121a.600 Responsibility for all educational programs. 331

Page

Sec.
121a.601 Monitoring and evaluation activities. 331
121a.602 Adoption of complaint procedures. 332

20 USC 1413 STATE PLANS 332
Annual Program Plans--General 335
Sec.
121a.112 Certification by the State educational agency and attorney general. 335
121a.113 Approval; disapproval. 335
121a.114 Effective period of annual program plan. 335
Annual Program Plans--Content 336
121a.138 Other Federal programs. 336
121a.139 Comprehensive system of personnel development. 336
121a.140 Private shcools. 336
121a.141 Recovery of funds for misclassified children. 336
121a.142 Control of funds and property. 336
121a.143 Records. 336
121a.144 Hearing on application. 337
121a.145 Prohibition of commingling. 337
121a.146 Annual evaluation. 337
121a.147 State advisory panel. 337
121a.148 Policies and procedures for use of Part B funds. 337
121a.151 Additional information if the State educational agency provides direct services. 337
Individualized Education Programs 338
121a.347 Private school placements. 338
121a.348 Handicapped children in parochial or other private schools. 338
Direct Service By the State Educational Agency 339
121a.360 Use of Local Educational Agency Allocation for Direct Services. 339
Comprehensive System of Personnel Development 339
121a.380 Scope of system. 339
121a.381 Participation of other agencies and institutions. 340
121a.382 Inservice training. 340
121a.383 Personnel development plan. 341
121a.384 Dissemination. 341
121a.385 Adoption of educational practices. 342
121a.386 Evaluation. 342
121a.387 Technical assistance to local educational agencies. 342
Subpart D--Private Schools 343
Handicapped Children in Private Schools Placed or Referred By Public Agencies 343
121a.400 Applicability of Secs. 121a.401 - 121a.403. 343
121a.401 Responsibility of State educational agency. 343
121a.402 Implementation by State educational agency. 343

Page

Handicapped Children In Private Schools Not Placed or Referred By Public Agencies 343
Sec.
121a.450 Applicability of Secs. 121a.451 - 121a.460. 343
121a.451 State educational agency responsibility. 344
121a.452 Local educational agency responsibility. 344
121a.453 Determination of needs, number of children, and types of services. 344
121a.454 Service arrangements. 344
121a.455 Differences in services to private school handicapped children. 344
121a.456 Personnel. 345
121a.457 Equipment. 345
121a.458 Prohibition of segregation. 345
121a.459 Funds and property not to benefit private school. 345
121a.460 Existing level of instruction. 345
Office of Education Procedures 346
121a.580 Opportunity for a hearing. 346
121a.581 Hearing panel. 346
121a.582 Hearing procedures. 346
121a.583 Initial decision; final decision. 346
121a.589 Waiver of requirement regarding supplementing and supplanting with Part B funds. 347
State Advisory Panel 348
121a.650 Establishment. 348
121a.651 Membership. 348
121a.652 Advisory panel functions. 349
121a.653 Advisory panel procedures. 349

20 USC 1416 WITHHOLDING AND JUDICIAL REVIEW 350
Due Process Procedures For Parents and Children 351
Sec.
121a.506 Impartial due process hearing. 351
Confidentiality of Information 352
121a.590 Withholding payments. 352
121a.591 Reinstating payments. 352
121a.592 Public notice by State and local educational agencies. 353
121a.593 Judicial review of Commissioner's final action on annual program plan. 353

20 USC 1417 ADMINISTRATION 353
Purpose, Applicability, and General Provisions Regulations 354
Sec.
121a.3 General provisions regulations. 354
121a.6 Include. 354
121a.12 Qualified. 355

Page

Due Process Procedures For Parents and Children 355
Sec.
121a.500 Definitions of "consent", "evaluation", and "personally identifiable". 355
Reports 355
121a.752 Annual report of children served-certification. 355
121a.753 Annual report of children served-criteria for counting children. 356
121a.754 Annual Report of children served-other responsibilities of the State educational agency. 356

COMPREHENSIVE EMPLOYMENT TRAINING ACT OF 1973 357
29 USC 815 CONDITIONS FOR RECEIPT OF FINANCIAL ASSISTANCE 357
Sec.
95.14 Content and description of grant application. 359

29 USC 817 STATE MANPOWER SERVICES COUNCIL 366
Sec.
95.13 Planning process; advisory councils. 368

29 USC 822 SUPPLEMENTAL VOCATIONAL EDUCATION ASSISTANCE 371
Subpart D - Special Grants to Governors 371
Sec.
95.50 General. 371
95.51 Distribution of funds. 371
95.52 Grant application. 372
95.53 Application approval and disapproval; grant agreement. 374
95.54 Modifications. 375
95.55 Governor's distribution of vocational education funds. 377
95.56 Program operations. 377
95.57 Funding; grant administration. 380
95.58 Nonfinancial agreement between prime sponsor and State Vocational Education Board. 381
95.59 Coordination with prime sponsor. 382
29 USC 823 EVALUATION: EXPERIMENTAL AND DEVELOPMENTAL PROJECTS 382

CIVIL RIGHTS ACT OF 1964 TITLE VI 385
42 USC 2000 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS 385
Sec.
80.1 Purpose. 386
80.2 Application of this regulation. 386
80.3 Discrimination prohibited. 387
80.4 Assurances required. 390
80.5 Illustrative application. 392
80.6 Compliance information. 394
80.7 Conduct of investigations. 395
80.8 Procedure for effecting compliance. 396
80.9 Hearings. 398

Page

Sec.
80.10 Decisions and notices. 399
80.11 Judicial review. 402
80.12 Effect on other regulations, forms and instructions. 402
80.13 Definitions. 403

EDUCATION AMENDMENTS OF 1972 TITLE IX 405

20 USC 1681 PROHIBITION OF SEX DISCRIMINATION SEX DISCRIMINATION PROHIBITED 405

20 USC 1682 FEDERAL ADMINISTRATIVE ENFORCEMENT 406

20 USC 1683 JUDICIAL REVIEW 407

20 USC 1684 PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND 407

20 USC 1685 EFFECT ON OTHER LAWS 407

20 USC 1686 INTERPRETATION WITH RESPECT TO LIVING FACILITIES 407
Subpart A -- Introduction 408
Sec.
86.1 Purpose and effective date. 408
86.2 Definitions. 408
86.3 Remedial and affirmative action and self-evaluation. 410
86.4 Assurance required. 411
86.5 Transfers of property. 412
86.6 Effect of other requirements. 412
86.7 Effect of employment opportunities. 412
86.8 Designation of responsible employee and adoption of grievance procedures. 413
86.9 Dissemination of policy. 413
Subpart B -- Coverage 414
86.11 Application. 414
86.12 Educational institutions controlled by religious organizations. 414
86.13 Military and merchant marine educational institutions. 414
86.14 Membership practices of certain organizations. 414
86.15 Admissions. 415
86.16 Educational institutions eligible to submit transitions plans. 415
86.17 Transition plans. 416
86.18 - 86.20 (Reserved) 417
Supart C - Discrimination on the Basis of Sex in Admission and Recruitment Prohibited 417
86.21 Admission. 417
86.22 Preference in admission. 418
86.23 Recruitment. 418

Page

Sec.

86.24 - 86.30 (Reserved) 418
Subpart D -- Discrimination on the Basis of Sex in Education Programs and Activities Prohibited 418
86.31 Educational programs and activities. 418
86.32 Housing. 420
86.33 Comparable facilities. 420
86.34 Access to course offerings. 421
86.35 Access to schools operated by L.E.A.s. 421
86.36 Counseling and use of appraisal and counseling materials. 422
86.37 Financial assistance. 422
86.38 Employment assistance to students. 423
86.39 Health and insurance benefits and services. 424
86.40 Marital or parental status. 424
86.41 Athletics. 425
86.42 Textbooks and curricular material. 426
86.43 - 86.50 (Reserved) 426
Subpart E -- Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited 426
86.51 Employment. 426
86.52 Employment criteria. 427
86.53 Recruitment. 428
86.54 Compensation. 428
86.55 Job classification and structure. 428
86.56 Fringe benefits. 428
86.57 Marital or parental status. 429
86.58 Effect of State or local law or other requirements. 430
86.59 Advertising. 430
86.60 Pre-employment inquiries. 430
86.61 Sex as a bona-fide occupational qualification. 430
86.62 - 86.70 (Reserved) 431
86.71 Interim procedures. 431

REHABILITATION ACT OF 1973 TITLE V 432

29 USC 794 NONDISCRIMINATION UNDER FEDERAL GRANTS 432
Subpart A -- General Provisions 432

Sec.

84.1 Purpose. 432
84.2 Application. 432
84.3 Definitions. 432
84.4 Discrimination prohibited. 434
84.5 Assurances required. 436
84.6 Remedial action, voluntary action, and self-evaluation. 437
84.7 Designation of responsible employee and adoption of grievance procedures. 438
84.8 Notice. 438
84.9 Administrative requirements for small recipients. 439

Page

Sec.
84.10 Effect of State or local law or other requirements and effect of employment opportunities. 439
Subpart B -- Employment Practices 439
84.11 Discrimination prohibited. 439
84.12 Reasonable accommodation. 440
84.13 Employment criteria. 440
84.14 Preemployment inquiries. 441
84.15 - 84.20 (Reserved) 442
Subpart C -- Program Accessibility 442
84.21 Discrimination prohibited. 442
84.22 Existing facilities. 442
84.23 New construction. 443
84.24 - 84.30 (Reserved) 444
Subpart D -- Preschool, Elementary, and Secondary Education 444
84.31 Application of this subpart. 444
84.32 Location and notification. 444
84.33 Free appropriate public education. 444
84.34 Educational setting. 446
84.35 Evaluation and placement. 447
84.36 Procedural safeguards. 448
84.37 Nonacademic services. 448
84.38 Preschool and adult education programs. 449
84.39 Private education programs. 449
84.40 (Reserved) 449
Subpart E -- Postsecondary Education 449
84.41 Application of this subpart. 449
84.42 Admissions and recruitment. 449
84.43 Treatment of students; general. 451
84.44 Academic adjustments. 451
84.45 Housing. 452
84.46 Financial and employment assistance to students. 452
84.47 Nonacademic services. 453
84.48 - 84.50 (Reserved) 454
Subpart F -- Health, Welfare, and Social Services 454
84.51 Application of this subpart. 454
84.52 Health, welfare, and other social services. 454
84.53 Drug and alcohol addicts. 455
84.54 Education of institutionalized persons. 455
84.55 - 84.60 (Reserved) 455
Subpart G -- Procedures 455
84.61 Procedures 455
84.62 - 84.99 (Reserved) 455

GUIDE TO USAGE OF TEXT

This legislative reference handbook is designed to facilitate quick and comprehensive reference to a number of Laws and Regulations applicable to Vocational Education. The format of this handbook is designed with columns that clearly indicate legislation, rules and regulations, their citation numbers and a "see also" column citing references to other parts of the text which will further understanding of the subject matter.

The Vocational Education Act is on a five column format. For example, on page one of the text the Vocational Education Act Starts with legislation number 20 USC 2301, which appears in the far left column. The body of the legislation is in the second column. In the third column is the citation number for the regulation. The body of the regulation appears in the fourth column. The "see also" column will refer to any other legislation or Act in the text to which that particular regulation also applies.

Cited at the end of the regulation, in parenthesis, is the specific section or sections of the legislation to which the regulation refers. For example, on page five under regulation section 105.201, in parenthesis at the end of this regulation is (Sec. 103 (a)(1); 20 USC 2303). This indicates to which legislation and to which part of the legislation this regulation applies.

The remaining Acts included in the text are on a two column format simply stating the legislation first and applicable rules and regulations afterwards.

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	VOCATIONAL EDUCATION ACT OF 1963 "PART A-STATE VOCATIONAL EDUCATION PROGRAMS "Declaration of Purpose		Subpart 1-State Administration	
20 USC 2301	"Sec. 101. It is the purpose of this part to assist States in improving planning in the use of all resources available to them for vocational education and manpower training by involving a wide range of agencies and individuals concerned with education and training within the State in the development of the vocational education plans. It is also the purpose of this part to authorize Federal grants to States to assist them -- "(1) to extend, improve, and, where necessary, maintain existing programs of vocational education, "(2) to develop new programs of vocational education, "(3) to develop and carry out such programs of vocational education within each State so as to overcome sex discrimination and sex stereotyping in vocational education programs (including programs of homemaking), and thereby furnish equal educational opportunities in vocational education to persons of both sexes, and "(4) to provide part-time employment for youths who need the	Sec. 104.1	Scope. Part 104 contains regulations interpreting or implementing Part A of Title I of the Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act"). (Sec. 101 through 150, 195; 20 U.S.C. 2301.)	
		Sec. 104.2	Purpose. (a) The purpose of Part A of the Act, as stated in section 101 of the Act, the "Declaration of Purpose," is to assist States in improving planning in the use of all resources available to the States for vocational education and manpower training by involving a wide range of agencies and individuals concerned with education and training within the State in the development of the vocational education plans. It is also the purpose of this part to authorize Federal grants to States to assist them- (1) To extend, improve, and where necessary, maintain existing programs of vocational education, (2) To develop new programs of vocational education,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	earnings from such employment to continue their vocational training on a full-time basis, so that persons of all ages in all communities of the State, those in high school, those who have completed or discontinued their formal education and are preparing to enter the labor market, those who have already entered the labor market, but need to upgrade their skills or learn new ones, those with special educational handicaps, and those in postsecondary schools, will have ready access to vocational training or retraining which is of high quality, which is realistic in the light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training.		(3) To develop and carry out such programs of vocational education within each State so as to overcome sex discrimination and sex stereotyping in vocational education programs (including programs of homemaking), and thereby furnish equal educational opportunities in vocational education to persons of both sexes, and (4) To provide part-time employment for youths who need the earnings from such employment to continue their vocational training on a full-time basis, so that persons of all ages in all communities of the State, those in high school, those who have completed or discontinued their formal education and are preparing to enter the labor market, those who have already entered the labor market, but need to upgrade their skills or learn new ones, those with special educational handicaps, and those in postsecondary schools, will have ready access to vocational training or retraining which is of high quality, which is realistic in the light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training. (b) The purpose of these regulations is to assist the States, local educational agencies,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			postsecondary institutions, and other institutions capable of carrying out vocational education programs, to administer the federally assisted State programs of vocational education under the Act. (Sec. 101; 20 U.S.C. 2301.)	
		Sec. 104.3	Applicability of General Education Provisions Regulations. Provisions in Parts 100, 100b, and 100c of the General Education Provisions Regulations (45 CFR Parts 100, 100b, and 100c), entitled "General Provisions for Office of Education Programs," are applicable to programs under the Act, except for the following sections: (a) Section 100b.16-Implementation of application procedures; (b) Section 100b.17-General application; (c) Section 100b.18-Annual program plan; (d) Section 100b.19-State plan requirements; (e) Sections 100b.92 (b)-Matching and cost sharing; (f) Section 100b.93-Valuation of in-kind contributions from third parties; and (g) Section 100b.94-Supporting records for in-kind contributions from third parties. (20 U.S.C. 2301 et seq.)	General Education Provisions p. 267 20 USC 2461 Secondary Program p. 263

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"Subpart 1 General Provisions "Authorization of Appropriations			
20 USC 2302	"Sec. 102 (a) There are authorized to be appropriated $880,000,000 for the fiscal year 1978, $1,030,000,000 for fiscal year 1979, $1,180,000,000 for fiscal year 1980, $1,325,000,000 for fiscal year 1981, and $1,485,000,000 for fiscal year 1982, for the purpose of carrying out subparts 2 and 3 of this part. "(b) There are also authorized to be appropriated $35,000,000 for fiscal year 1978, $40,000,000 for fiscal year 1979, and $45,000,000 for fiscal year 1980, $50,000,000 for fiscal year 1981, and $50,000,000 for fiscal year 1982, for the purpose of carrying out subpart 4 of this part. "(c) There are also authorized to be appropriated $55,000,000 for fiscal year 1978, $65,000,000 for fiscal year 1979, $75,000,000 for fiscal year 1980, $80,000,000 for fiscal year 1981, and $80,000,000 for fiscal year 1982 for the purpose of carrying out subpart 5 of this part. "(d) There are also authorized to be appropriated $25,000,000 for fiscal year 1978 and for each fiscal year ending prior to October 1, 1982,			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	for the purpose of assisting States in - "(1) preparing the five-year plans required under section 107; "(2) preparing the annual program plans and accountability reports, including the collection of necessary data, required to be submitted under section 108; and "(3) conducting the evaluations required by section 112.			
	"Allotments Among States		Subpart 2 - Indian Tribes	
20 USC 2303	Sec. 103.(a)(1)(A) Subject to the provisions of the subsection (d) of this section, from the sums appropriated pursuant to section 102(a), the Commissioner shall first reserve an amount equal to 5 per centum of such sums. From the amount so reserved, the Commissioner shall transfer an amount, not to be less than $3,000,000 but not to exceed $5,000,000 in any fiscal year, to the National Occupational Information Coordinating Committee established pursuant to section 161 (b)(1) and the remainder of the amount so reserved shall be used by the Commissioner for programs of national significance under subpart 2 of part B.		Contract Program for Indian Tribes and Indian Organizations	
		Sec. 105.201	Purpose. The purpose of the program for Indian tribes and Indian organizations is for the Commissioner, at the request of an Indian tribe, to make a contract or contracts directly with Indian tribal organizations, with funds available under section 103(a)(1) of the Act, to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the Act, particularly section 103(a)(1)(B)(iii) of the Act. (Sec. 103(a)(1); 20 USC 2303.)	
	"(B)(i) From the remainder of the sums appropriated pursuant to section 102(a), the Commissioner is authorized to reserve for purposes of this subparagraph an amount approximately	Sec. 105.202	Applicability of the Indian Self-determination Act of 1975. (a) Any contract entered into under this subpart is subject to the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	equivalent to the same percentage of that appropriation as the population aged fifteen to twenty-four, inclusive, which is eligible to receive educational benefits as Indians from the Bureau of Indian Affairs is to the total population of all the States aged fifteen to twenty-four, inclusive, except that such amount shall not exceed 1 per centum of such remaining appropriation.		provisions of sections 4, 5,6,7(b) and 102 of the "Indian Self-Determination and Education Assistance Act of 1975," Pub. L. 93-638. (b) Regulations implementing the above sections of the Indian Self-Determination and Education Assistance Act, Title 25 of the Code of Federal Regulations, Secs. 271.44, 271.46, 271.47, and 271.50 are applicable to the extent that they are relevant and practicable.	
"Act of April 16, 1934."	"(ii) For purposes of this subparagraph, the term 'Act of April 16, 1934' means the Act entitled 'An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes', enacted April 16, 1934 (48 Stat. 596; 25 U.S.C. 452-457).		(c) Whenever the term "Secretary of the Interior" is used, in the Indian Self-Determination and Education Assistance Act, the term means, for the purposes of this subpart, "Commissioner of Education." (Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450a, et seq.)	
25 USC 450f note.	"(iii) The Commissioner is directed, upon the request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or under the Act of April 16, 1934, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the purposes of this Act, except that	Sec. 105.203	Definitions. (a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. (b) "Tribal organization means the recognized governing body of any Indian tribe or any legally established organization	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
25 USC 455-457.	such contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this sentence.		of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by the organization and which includes the maximum participation of Indians in all phases of its activities. (25 U.S.C. 450b.)	
	From any remaining funds reserved pursuant to division (i) of this subparagraph (B), the Commissioner is authorized to enter into an agreement with the Commissioner of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians described in division (i) of this subparagraph (B), and the Secretary of the Interior is authorized to receive these funds for that purpose. Beginning in the fiscal year 1979, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subparagraph to pay a part of the costs of	Sec. 105.204	Assistance contracts. Awards will be made competitively through assistance contracts governed by Subchapter A of Title 45, Code of Federal Regulations (entitled "General Provisions for Office of Education Programs"), except to the extent that appropriate sections of the Indian Self-Determination and Education Assistance Act of 1975 apply or to the extent that more specific regulations in this subpart apply. The criteria in 45 CFR 100a.26(b) do not apply to this program. (Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450e(b).)	
	programs funded under this subparagraph. During each of the fiscal years covered by this subparagraph, the Bureau of Indian Affairs shall expend no less than the amount expended during the prior fiscal year on vocational education programs, services and activities.	Sec. 105.205	Eligible applicants. An Indian tribal organization of an Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act of 1975 or under the Act of April 16, 1934, is eligible for assistance contracts. (Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)	
Plan preparation.	The Commissioner and the Commissioner of Indian Affairs shall jointly prepare a plan for the expenditure			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
Program administration.	of funds made available and for the evaluation of programs assisted under this subparagraph. Upon the completion of a joint plan for the expenditure of these funds and the evaluation of the programs, the Commissioner shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs. "(2) From the remainder of the sums appropriated pursuant to section 102(a) and from all	Sec. 105.206	Applications for assistance contracts. An application from an eligible tribal organization must be submitted to the Commissioner by the Indian tribe and must contain the information that the Commissioner requires. An application which serves more than one Indian tribe shall be approved by each tribe to be served in the application. (Sec. 103(a)(1)(B)(iii); Pub. L. 93-638; 20 U.S.C. 2303; 25 U.S.C. 450b(c).)	
	of the sums appropriated pursuant to sections 102 (b), (c), and (d), the Commissioner shall allot to each State for each fiscal year-- "(A) an amount which bears the same ratio to 50 per centum of the sums being allotted as the product of the population aged fifteen to nineteen, inclusive, in the State in the fiscal year preceeding the fiscal year for which the determination	Sec. 105.207	Review for duplication of effort. An applicant shall submit a copy of the application directly to the Commissioner of the Bureau of Indian Affairs and the State board at the same time it submits an application to the Office of Education in order to avoid duplication of funding. (Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303.)	
	is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; (B) an amount which	Sec. 105.208	No cost sharing. No cost sharing by the applicant is required. (Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303.)	
	bears the same ratio to 20 per centum of the sums being allotted as the product of the population aged twenty to twenty-four inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to	Sec. 105.209	Duration of awards. (a) The total project period of an award may not exceed three years. The Commissioner may make multi-year awards if the nature of the project warrants multi-year funding. Continuation funding is contingent upon satisfactory performance. Application for multi-year	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	the sum of the corresponding products for all the States; "(C) an amount which bears the same ratio to 15 per centum of the sums being allotted as the product of the population aged twenty-five to sixty-five, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and "(D) an amount which bears the same ratio to 15 per centum of the sums being allotted as the amounts allotted to the State under subparagraphs		awards shall have a detailed budget for the current year and total budget figures for the subsequent years. (b) A request for continuation of a project beyond the project period will be considered a new application and will be reviewed competitively with all other applications. In order for the Commissioner to make this determination, an applicant who has had a prior contract under this program shall include an evaluation of the previous project. (Implements Sec. 103(a)(1)(B)(iii); 45 CFR 100a, 432; 20 U.S.C. 2303.)	
	(A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year. "(b)(1) The amount of any State's allotment	Sec. 105.210	Final reports. The contractor shall submit final financial status and performance reports as the Commissioner shall request. (45 CFR 100a.403; 45 CFR 100a.432; 20 U.S.C. 2303.)	
	under subsection (a) for any fiscal year which is less than $200,000 shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotments to each of the remaining States under such subsection, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from being thereby reduced to less than that amount.	Sec. 105.211	Technical review criteria. The following criteria will be utilized in reviewing applications. These criteria are consistent with 45 CFR 100a.26(b), Review of Applications, in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(2) The amount of any State's allotment under subsection (a) for any fiscal year which the Commissioner determines will not be required for such fiscal year for carrying out the program for which such amount has been allotted shall be available, from time to time, for reallotment, on such dates during such year as the Commissioner shall fix, on the basis of criteria established by regulation, among other States, except that funds appropriated under section 102(b) may only be reallotted for the use set forth in section 140. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the next succeeding fiscal year and shall be deemed to be part of its allotment for the year in which it is obligated. "(c)(1) The allotment ratio for any State shall be 1.00 less the product of-- "(A) 0.50; and "(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), except that (i) the allotment ratio in no case shall be more than 0.60 or less than		The maximum aggregate score for the criteria is 100 points, and the maximum weight for each criterion is listed below in parentheses. Points will be awarded to the extent that evidence in the application satisfies each criterion. The review of these criteria shall constitute the basis for the Commissioner to enter or decline to enter into a contract with an eligible applicant. If the review of any application results in no recommendation to fund (where funds are available), this will mean that it is not satisfactory, as that term is used in the Indian Self-Determination Act (section 102). Applications must receive a minimum of 30 points to be considered for funding. (25 U.S.C. 450f.) (a) Program improvement. (Maximum 15 points.) The application focuses on the improvement of occupational training opportunities for Indians and delineates the way in which the proposed program will contribute to improved programs for the specific target group. (b) Need. (Maximum 10 points.) The need section clearly: (1) Describes the need for the proposed activity; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes, where appropriate, ongoing and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
"Per capita income"	0.40, and (ii) the allotment ratio for Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Terrirory of the Pacific Islands shall be 0.60. "(2) The allotment ratios shall be promulgated by the Commissioner for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the three most recent consecutive fiscal years for which satisfactory data are available. "(3) The term 'per capita income' means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year. "(4) For the purposes of this section, population shall be determined by the Commissioner on the basis of the latest estimates available to him. "(d) The amount of any State's allotment under this section from appropriations provided under section 102, for any fiscal year shall not be less than the total amount of payments made to the State under allotments determined under this Act for the fiscal		planned activities in the community relative to the need. (c) Objectives. (Maximum 10 points.) The objectives: (1) Relate to the need; (2) Are significant for vocational education; (3) Clearly describe proposed program outcomes; (4) Are capable of being attained; and (5) Are measurable. (d) Plan. (Maximum 15 points.) The plan clearly describes the way in which the objectives will be accomplished by: (1) The overall design for the proposed program; and (2) The use of specific procedures to implement activities designed to accomplish each objective of each segment of the proposed program; (3) A description of: (i) Specific activities to be conducted in the proposed program; (ii) Instruments to be used in the proposed program; (iii) Instructional material to be used in the proposed program, if appropriate; and (iv) Population to be served in the proposed program; and (4) Statistical and analytical procedures, if appropriate. (e) Management plan. (Maximum 10 points.) The management plan adequately describes the way in which personnel and resources will be utilized to accomplish each objective, the overall design,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	year ending June 30, 1976. "(e) From the sums allotted to a State under this section from appropriations made under section 102(a), 80 per centum of such sums shall be available to each State for the purpose of carrying out subpart 2 of this part and 20 per centum shall be available for the purpose of carrying out subpart 3 of this part.		and each major procedure. (f) Evaluation plan. (Maximum 10 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results in terms of the achievement of project goals and objectives. (g) Applicant's staff competencies and experience. (Maximum 10 points.) Points will be awarded on the extent to which the application clearly describes: (1) The competencies that are required for the proposed project; (2) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and any consultants; (3) Time commitments planned for the project by the project director, key staff advisory groups, and any consultants; (4) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; (5) Evidence of commitment to section 7(b) of the Indian Self-Determination and Education Assistance Act. (h) Budget and cost effectiveness. (Maximum 10 points.) Points will be awarded on the extent to which the application provides a justifiable and itemized statement of cost which contains line	20 USC 2330 Reg.104.501 p.102 20 USC 2350 Reg.104.701 p.12 20 USC 2401 Reg.105.101 p.179

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			items in the proposed budget and appears to be cost effective with respect to proposed results. (i) Institutional capability and commitment. (Maximum 10 points.) The application provides adequate evidence of: (1) Institutional experience and commitment to the proposed work; (2) Appropriate facilities and equipment; and (3) Documented assurances of support from cooperating local educational agencies, postsecondary institutions, business, industry, or labor, if support from any of these groups is necessary for successful implementation of the project. (Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 450f.)	
		Sec. 105.212	Additional factors for declining to contract. In addition to the weighted technical review criteria listed in Sec. 105.211, the Commissioner may use any of the factors listed below in making a decision whether to decline to enter into a contract with an eligible applicant. (a) The program duplicates an effort already being made; (b) Funding the program would create an inequitable distribution among tribes; or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) The applicant has not performed satisfactorily under a previous Office of Education award. (Implements Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303; 25 U.S.C. 250f.)	
		Sec. 105.213	Hearing by the Commissioner after declining to enter into a contract. After receiving notice from the Commissioner that the Office of Education will not award a contract to an eligible applicant, the tribal organization or the tribe shall have 30 calendar days to request a hearing, in writing, to review the Commissioner's decision. (25 U.S.C. 450f.)	
		Sec. 105.214	Remaining funds. From any remaining funds reserved for this subpart, the Commissioner is authorized to enter into an agreement with the Commissioner of the Bureau of Indian Affairs for the operation of vocational education programs authorized by this Act in institutions serving Indians as described in section 103(a)(B)(i) of the Act. The Secretary of the Interior is authorized to receive funds for that purpose. (Sec. 103(a)(1)(B)(iii); 20 U.S.C. 2303.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"STATE ADMINISTRATION			
20 USC 2304	"Sec. 104.(a)(1) Any State desiring to participate in programs authorized by this Act shall, consistent with State law, designate or establish a State board or agency (hereinafter in this Act referred to as the 'State board') which shall be the sole State agency responsible for the administration, or for the supervision of the administration, of such programs. The responsibilities of the State board shall include-	Sec. 104.4	Cross reference to definitions. Definitions necessary for the understanding of Parts 104 and 105 are set forth in Part C of Title I of the Act (section 195 of the Act) and as Appendix A at the end of Part 105 or these regulations. Some additional definitions necessary for the understanding of Part 105 appear in Part 105. (Sec. 195; 20 U.S.C 2461.)	20 USC 2461 Sec. 195 p. 250
	"(A) the coordination of the development of policy with respect to such programs; "(B) the coordination of the development, and the actual submission to the Commissioner, of the five-year State plan required by section 107 and of the annual program plan and accountability report required by section 108; and "(C) the consultation with the State advisory council on vocational education and other appropriate State agencies, councils, and individuals involved in the planning and reporting as required by sections 107 and 108.	Sec. 104.31	STATE BOARD Establishment of State board. (a) A State desiring to participate in programs under the Act shall, consistent with State law, designate or establish a State board or agency which shall be the sole State agency responsible for the administration, or for the supervision of administration, of programs under the Act. (b) The State board is solely accountable to the Commissioner for the State's expenditure of Federal vocational education funds. (Sec. 104(a)(1); 20 U.S.C. 2304; Sen. Rept. No. 94-882, p. 72.)	
	Except with respect to those functions set forth in the preceeding sentence, the State board may delegate any of its other responsibilities involving administration, operation, or supervision,	Sec. 104.32	Responsibilities of the State board. The responsibilities of the State board include (but are not limited to): (a) Coordination of the development of policy with	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	in whole or in part, to one or more appropriate State agencies. "(2) Each State board shall certify to the Commissioner, as part of its annual program plan and accountability report submitted pursuant to section 108, any delegation of its responsibilities for administration, operation, or supervision of vocational education programs under this Act to other appropriate State agencies, setting forth the specific responsibility delegated and the specific agency involved. "(3) Each State board shall also certify to the Commissioner, as part of its five-year plan and as part of its annual program plan and accountability report, that each of the agencies, councils, and individuals required to be involved in formulating the five-year plan and the annual plan and report have been afforded the opportunity to be involved in accordance with the provisions of this Act.		respect to programs under the Act (as set forth in Secs. 104.162, 104.163, 104.204, and 104.205); (b) Coordination of the development of the five-year State plan (as set forth in Sec. 104.181), the annual program plan (as set forth in Secs. 104.221 and 104.222), and the accountability report (as set forth in Sec. 104.241); (c) The submission to the Commissioner of the five-year State plan, the annual program plan, and the accountability report; and (d) Consultation with the State advisory council on vocational education and with other State agencies, councils, and individuals (as set forth in Sec. 104.162). (Sec. 104(a)(1)(A),(B),(C); 20 U.S.C. 2304. (e) Cooperation with the Administrator of the National Center for Educational Statistics in the development and submission of information required for a national vocational education data reporting and accounting system. (Sec. 161(a); 20 U.S.C. 2391.)	20 USC 2391 Sec. 161(a) p. 168
	"(b)(1) Any State desiring to participate in the programs authorized by this Act shall also assign such full-time personnel as may be necessary to assist the State board in fulfilling the purposes of this Act by-- "(A) taking such action as may be necessary to create awareness of programs and activities in vocational education that	Sec. 104.33	Delegation of functions. The State board may delegate any of its responsibilities (except those responsibilities set forth in Sec. 104.32), in whole or in part, to one or more appropriate agencies. (Sec. 104(a)(1); 20 U.S.C. 2304.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	are designed to reduce sex stereotyping in all vocational education programs; "(B) gathering, analyzing, and disseminating data on the status of men and women, students and employees in the vocational education programs of that State; "(C) developing and supporting actions to correct any problems brought to the attention of such personnel through activities carried out under clause (B) of this sentence: "(D) reviewing the distribution of grants by the State board to assure that the interests and needs of women are addressed in the projects assisted under this Act;	Sec. 104.34	State administration and leadership. The State board shall provide for a State staff sufficiently qualified by education and experience and in sufficient numbers to enable the State board to carry out its functions under the State plan. The State board staff shall include a full-time State director. (Implements Sec. 104(a)(1) and Sec. 106(a)(1).) FULL-TIME PERSONNEL AND FUNCTIONS TO ELIMINATE SEX DISCRIMINATION AND SEX STEREOTYPING	20 USC 2306 Sec. 106(a)(1) p. 39
	"(E) reviewing all vocational education programs in the State for sex bias; "(F) monitoring the implementation of laws prohibiting sex discrimination in all hiring, firing, and promotion procedures within the State relating to vocational education;	Sec. 104.71	Scope Sections 104.72 through 104.76 apply only to the fifty States and the District of Columbia. (These sections do not apply to the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Mariana Islands, or the Trust Territory of the Pacific Islands.) (Sec. 104(b)(3); 20 U.S.C. 2304.)	
	"(G) reviewing and submitting recommendations with respect to the overcoming of sex stereotyping and sex bias in vocational education programs for the annual program plan and report; "(H) assisting local educational agencies and other interested parties in the State in improving vocational education	Sec. 104.72	Selection of full-time personnel to eliminate sex discrimination and sex stereotyping. (a) A State desiring to participate in the programs authorized by the Act shall select personnel to work full time to assist the State board in fulfilling the purposes of the Act concerned with: (1) Furnishing equal educational opportunities	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	opportunities for women; and "(I) making readily available to the State board, the State and National Advisory Councils on Vocational Education, the State Commission on the Status of Women, the Commissioner and the general public, information developed pursuant to this subsection. "(2) From the funds appropriated to carry out subpart 2, each State shall reserve $50,000 in each fiscal year to carry out this subsection.		in vocational education programs to persons of both sexes; and (2) Eliminating sex discrimination and sex stereotyping from all vocational education programs. (Secs. 101(3), 104(b)(1); 20 U.S.C. 2301, 2304.) (b) In selecting the full-time professional personnel, the State shall match the qualifications of the applicants with the responsibilities of the job. (Implements Sec. 104(b)(1); 20 U.S.C. 2304.)	20 USC 2301 Sec. 101(3) p. 1
	"(3) For the purpose of this subsection, the term 'State' means any one of the fifty States and the District of Columbia (as such Act will be in effect on October 1, 1977).	Sec. 104.73	Definitions The following definitions apply for the purposes of Secs. 104.72 through 104.76 and throughout the Act and regulations. (a) "Sex bias" means behaviors resulting from the assumption that one sex is superior to the other. (b) "Sex stereotyping" means attributing behaviors, abilities, interests, values, and roles to a person or group of persons on the basis of their sex. (C) "Sex discrimination" means any action which limits or denies a person or a group of persons opportunities, privileges, roles, or rewards on the basis of their sex. (Implements Sec. 104(b); 20 U.S.C. 2304.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 104.74	Funds for full-time personnel and functions. (a) Each State shall expend not less than $50,000 in each fiscal year from funds available under basic grants (section 120 of the Act) to support the personnel working full-time to carry out the functions set forth in Sec. 104.75. (Secs. 104(b)(2), 120(b)(1)(F); 20 U.S.C. 2304, 2330.) (b) Funds set aside under paragraph (a) of this section shall be used for: (1) Salaries for full-time professional staff; (2) Salaries for support staff; and (3) Travel and other expenses directly related to the support of personnel in carrying out the functions set forth in Sec. 104.75. (Implements Sec. 104(b); 20 U.S.C. 2304.)	20 USC 2330 Sec. 120(b)(1)(F) p. 103
		Sec. 104.75	Functions of full-time personnel. Personnel designated under Sec. 104.72 shall work full time to: (a) Take action necessary to create awareness of programs and activities in vocational education designed to reduce sex bias and sex stereotyping in all vocational education programs, including assisting the State board in publicizing the public hearings on the State plan in accordance with Sec. 104.165(a); (b) Gather, analyze, and disseminate data on	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the status of men and women students and employees in vocational education programs of the State; (c) Develop and support actions to correct problems brought to the attention of this personnel through activities carried out under paragraph (b) and Sec. 104.76, including creating awareness of the Title IX complaint process; (d) Review the distribution of grants and contracts by the State board to assure that the interests and needs of women are addressed in all projects assisted under this Act; (e) Review all vocational education programs (including work-study programs, cooperative vocational education programs, apprenticeship programs, and the placement of students who have successfully completed vocational education programs) in the State for sex bias; (f) Monitor the implementation of laws prohibiting sex discrimination in all hiring, firing, and promotion procedures within the State relating to vocational education; (g) Assist local educational agencies and other interested parties in the State in improving vocational education opportunities for women; and (h) Make available to the State board, the State advisory council	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the National Advisory Council on Vocational Education, the State Commission on the Status of Women, the Commissioner, and the general public, including individuals and organizations in the State concerned about sex bias in vocational education, information developed under this section; (Sec. 104(b)(1); 20 U.S.C. 2304.) (i) Review the self-evaluations required by Title IX; and (Implements Sec. 104(b)(1); 20 U.S.C. 2304.) (j) Review and submit recommendations with respect to overcoming sex bias and sex stereotyping in vocational education programs for the five-year State plan and its annual program plan prior to their submission to the Commissioner for approval. (Secs. 104(b)(1), 109(a)(3)(B); 20 U.S.C. 2304, 2309.)	20 USC 2309 Sec. 109(a)(3)(B) p. 74
		Sec. 104.76	Studies to carry out functions. A State may use funds available under section 130 of the Act to support studies necessary to carry out the functions set forth in Sec. 104.75. (Implements Sec. 104(B)(1); 20 U.S.C. 2304.)	
		Sec. 104.171	Certification of plans. As used in this section, the term "plans" refers to the five-year State plan and the annual program plan and accountability report. The plans	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			submitted shall include, as attachments, the following certifications: (a) Certification by the State attorney general. The State attorney general, or other official designated in accordance with State law to advise the State board on legal matters, shall certify that the State board named in the plan is the sole agency which has authority under State law to submit the plan and to administer or supervise the administration of vocational education, and that all the plan's provisions with respect to the use of funds under the Act can be carried out by the State. (Implements Sec. 104(a)(1); 20 U.S.C. 2304.) (b) Certification of involvement of designated agencies. (1) The State board shall certify that each of the agencies, councils, and individuals required in Sec. 104.162 has been afforded the opportunity to be involved. The State board shall include in this certification all recommendations rejected by the Board, complete identification of the agency, council, or individual having made the rejected recommendation and the reason for rejecting these recommendations, as required by Sec. 104.164(b). This certification shall also indicate the meetings held	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			under the authority of Sec. 104.163 (2) Each representative required in Sec. 104.162 shall certify that he or she has had the opportunity to participate actively in formulating the plan. (Implements Secs. 104(a)(3), 107(a)(1); 20 U.S.C. 2304, 2307.)	20 USC 2307 Sec. 107(a)(1) p. 48
			(c) Certification of delegation. The State board shall certify any delegation by the state board of responsibilities for administration, operation, or supervision of vocational education programs to other appropriate State agencies. The statement shall set forth the procedures used for delegation, the specific responsibilities delegated, and the specific agency or agencies involved. (Implements Sec. 104(a)(2); 20 U.S.C. 2304.) (d) Certification of public hearings. The State board shall certify the method used to provide reasonable notice and opportunity for public hearings throughout all regions of the State in order to permit all segments of the population to give their views on the goals for vocational education which ought to be adopted in the plan in terms of the elements listed in Secs. 104.165(b) and 104.207(b). The statement shall also include the views expressed at the hearings and a description of how those views are reflected in	20 USC 2307 Sec. 107 (a)(2) p. 51

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the plan. If any views are not reflected, the statement shall set out the reasons for rejecting them. (Implements Sec. 107(a)(2), 108(a)(2); 20 U.S.C. 2307, 2308.)	20 USC 2308 Sec. 108(a)(2) p. 67
			(e) Certification of local advisory councils. The State board shall certify that eligible recipients within the State have been notified of their responsibility to establish local advisory councils. The State board shall also certify that eligible recipients receiving assistance under the Act to operate vocational education programs have established these councils. (Implements Sec. 105(g); 20 U.S.C. 2305.)	20 USC 2305 Sec. 105(g) p. 33
			(f) Certification of consultation with State advisory council. The State advisory council shall certify that the plan was prepared in consultation with the council. (Implements Sec. 105(d); 20 U.S.C. 2305.)	20 USC 2305 Sec. 105(d) p. 30
			(g) Certification by full-time personnel of opportunity to review the plans. The personnel assigned full time to review programs within the State to assure equal access to vocational education by both men and women shall certify that the opportunity to review the plan has been afforded. (Implements Sec. 109(a)(3)(B); 20 U.S.C. 2309.)	20 USC 2309 Sec. 109(a)(3)(B) p.74

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(h) *Certification of adoption by State board*. The State board shall certify that development of the plan has been coordinated with the agencies, councils, and individuals as required by Sec. 104.162 and that the final decision has been adopted by the State board, and that the plan constitutes the basis for operation and administration of the State's vocational education program. (Implements Sec. 104(a)(1); 20 U.S.C. 2304.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"STATE AND LOCAL ADVISORY COUNCILS		STATE ADVISORY COUNCIL	
20 USC 2305	"Sec. 105. (a) Any State which desires to participate in programs under this Act for any fiscal year shall establish a State advisory council, which shall be appointed by the Governor or in the case of States in which the members of the State board of education are elected (including election by the State legislature), by such board. Members of each State advisory council shall be appointed for terms of three years except that (1) in the case of the members appointed for fiscal year 1978, one-third of the membership shall be appointed for terms of one year each and one-third shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be for such terms as remain unexpired. Each State advisory council shall have as a majority of its members persons who are not educators or administrators in the field of education and shall include as members one or more individuals who-- "(1) represent, and are familiar with, the vocational needs and problems of management in the State; "(2) represent, and are familiar with, the vocational needs and	Sec. 104.91	Establishment and certification. (a) Establishment. A State which desires to receive funds under the Act and the regulations in this part for any fiscal year shall establish a State advisory council. The council shall be appointed by the Governor or, in a State in which the members of the State board are elected, by the State board itself. (Sec. 105(a); 20 U.S.C. 2305.) (b) Appointment by the State board. In order for the appointment power to be vested in the State board, under the authority of paragraph (a) of this section, a majority of its members must be individuals elected by the State legislature or directly by the eligible voters of the State or of the districts which the individuals represent. (Interprets Sec. 105(a); 20 U.S.C. 2305.) (c) Certification. The appointing authority, required by paragraph (a) of this section, shall certify to the Commissioner the establishment and membership of its State advisory council not less than 90 calendar days before the beginning of each fiscal year. (Sec. 105(b); 20 U.S.C. 2305.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	problems of labor in the State; "(3) represent, and are familiar with the vocational needs and problems of agriculture in the State; "(4) represent State industrial and economic development agencies; "(5) represent community and junior colleges; "(6) represent other institutions of higher education, area vocational schools, technical institutes, and postsecondary agencies or institutions which provide programs of vocational or technical education and training; "(7) have special knowledge, experience, or qualificaitons with respect to vocational education but are not involved in the administration of State or local vocational education programs; "(8) represent and are familiar with, public programs of vocational education in comprehensive secondary schools; "(9) represent, and are familiar with, nonprofit private schools; "(10) represent, and are familiar with, vocational guidance and counseling services; "(11) represent State correctional institutions; "(12) are vocational education teachers presently teaching in local educational agencies;	Sec. 104.92	Membership. (a) Required representation. The membership of the State advisory council shall include one or more individuals who: (1) Represent, and are familiar with the vocational needs and problems of management in the State. (2) Represent, and are familiar with the vocational needs and problems of labor in the State; (3) Represent, and are familiar with the vocational needs and problems of agriculture in the State; (4) Represent State industrial and economic development agencies; (5) Represent community and junior colleges; (6) Represent other institutions of higher education, area vocational schools, technical institutes, and postsecondary agencies or institutions which provide programs of vocational or technical education and training; (7) Have special knowledge, experience or qualifications with respect to vocational education but are not involved in the administration of State or local vocational education programs; (8) Represent, and are familiar with, public programs of vocational education in comprehensive secondary schools; (9) Represent, and are familiar with, nonprofit private schools;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 817.	"(13) are currently serving as superintendents or other administrators of local educational agencies; "(14) are currently serving on local school boards; "(15) represent the State Manpower Services Council established pursuant to section 107 of the Comprehensive Employment and Training Act of 1973; "(16) represent school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability; "(17) are women with backgrounds and experiences in employment and training programs, and who are knowledgeable with respect to the special experiences and problems of sex discrimination in job training and employment and of sex stereotyping in vocational education, including women who are members of minority groups and who have, in addition to such backgrounds and experiences, special knowledge of the problems of discrimination in job training and employment against women who are members of such groups; "(18) have special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons;		(10) Represent, and are familiar with, vocational guidance and counseling services; (11) Represent State correctional institutions; (12) Are vocational education teachers presently teaching in local educational agencies; (13) Are currently serving as superintendents or other administrators of the local educational agencies; (14) Are currently serving on local school boards; (15) Represent the State Manpower Services Council established pursuant to Section 107 of the Comprehensive Employment and Training Act of 1973; (16) Represent school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability; (17) Are women with backgrounds and experiences in employment and training programs, and who are knowledgeable with respect to the special experiences and problems of sex discrimination in job training, and employment, and of sex stereotyping in vocational education, including women who are members of minority groups having special knowledge of the problems of discrimination in job training and employment against women in minority groups;	Comprehensive Employment and Training Act p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(19) represent the general public, including a person or persons representing and knowledgeable about the poor and disadvantaged; and "(20) are vocational education students who are not qualified for membership under any of the preceding clauses of this sentence. Members of the State advisory council may not represent more than one of the above-specified categories. In appointing the State advisory council the Governor or the State board of education, as the case may be, shall insure that there is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the State. "(b) Not less than ninety days prior to the beginning of any fiscal year in which a State desires to receive a grant under this Act, the State shall certify the establishment of, and membership of, its State advisory council to the Commissioner. "(c) Each State advisory council shall meet within thirty days after certification has been accepted by the Commissioner and shall select from among its membership a Chairman. The time, place, and manner of meeting, as well as council operating procedures and staffing, shall be as		(18) Have special knowledge, experience, or qualifications with respect to the special educational needs of physically or mentally handicapped persons; (19) Represent the general public, including at least one person representing and knowledgeable about the poor and disadvantaged; and (20) Are vocational education students who are not qualified for membership under any of the preceding clauses of this sentence. (Sec. 105(a); 20 U.S.C. 2305.) (b) Special considerations. The appointing authority, pursuant to paragraph (a) of this section, shall insure that: (1) The State advisory council has as a majority of its members persons who are not educators or administrators in the field of education; (2) Members of the State advisory council do not represent more than one category; (Sec. 105(a); 20 U.S.C. 2305.) (3) There is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the State. The Commissioner considers the term "appropriate representation" to be representation which generally reflects the percentage of women or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	provided by the rules of the State advisory council, except that such rules must provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.		minorities in the population of the State or the percentage of women or minorities in the work force of the State. (Implements Sec. 105(a); 20 U.S.C. 2305.)	
	"(d)(1) Each State advisory council shall advise the State board in the development of the five-year State plan submitted under section 107 and the annual program plan and accountability report submitted under section 108 and shall advise the State board on policy matters arising out of the administration of programs under such plans and reports.		(4) In order to avoid any conflict of interest, the membership of the State advisory council excludes members of the State board and members of its staff who are directly involved in State administration of vocational education. (Implements Sec. 105(d)(e); 20 U.S.C. 2305.)	
	"(2) Each state advisory council shall also evaluate vocational education programs, services, and activities assisted under this Act, and publish and distribute the results thereof.		(c) Term of appointment. Members of the State advisory council shall be appointed for terms of three years except that; (1) In the case of the members appointed for fiscal years 1978, one-third of the membership shall be appointed for terms of one year each and one-third shall be appointed for terms of two years each:	
Evaluation Report.	"(3) Each State advisory council shall prepare and submit to the Commissioner and to the National Advisory Council created under section 162, through the State board, an annual evaluation report, accompanied by such additional comments of the State board as the State board deems appropriate, which (A) evaluates the effectiveness of vocational education programs, services, and activities carried out		(2) An appointment to fill a vacancy shall be for the term that remains unexpired; and (Sec. 105(a); 20 U.S.C. 2305.) (3) Members serving on the State advisory council on October 1, 1977, may continue to serve for the terms for which they were appointed, but for not more than two fiscal years unless reappointed. (Sec. 204(b); 20 U.S.C. 2301 note.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	in the year under review in meeting the program goals set forth in the five-year State plan submitted under section 107 and the annual program plan and accountability report submitted under section 108, including a consideration of the program evaluation reports developed by the State pursuant to section 112 and of the analysis of the distribution of Federal funds within the State submitted by the State board pursuant to section 108, and (B) recommends such changes in such programs, services, and activities as may be deemed necessary. "(4)(A) Each State advisory council shall identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the State and assess the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (B) comment, at least once annually, on the reports of the State Manpower Services Council, which comments shall be included in the annual report submitted by the State advisory council pursuant to this section and in	Sec. 104.93	Functions and responsibilities. The State advisory council shall: (a) Advise the State board in the development of the five-year State plan submitted under the authority of Sec. 104.181, the annual program plan submitted under the authority of Secs. 104.221, and 104.222, and the accountability report submitted under the authority of Sec. 104.241. A statement describing its consultation with the State board shall be submitted with the five-year State plan, and the annual program plan and accountability report under Sec. 104.171(f). (Sec. 105(d)(1); 20 U.S.C. 2305.) (b) Advise the State board on policy matters arising out of the administration of programs under the approved five-year State plan, the annual program plan, and the accountability report; (Sec. 105(d)(1); 20 U.S.C. 2305.) (c) Evaluate vocational education programs (including programs to overcome sex bias), services, and activities under the annual program plan, and publish and distribute the results thereof; (Sec. 105(d)(2); 20 U.S.C. 2305.) (d) Assist the State board in developing plans for State board evaluations under the authority	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 817.	the annual report submitted by the State council pursuant to section 107 of the Comprehensive Employment and Training Act of 1973. "(e) Each State advisory council is authorized to obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions under this Act and to contract for such services as may be necessary to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.		of Sec. 104.401 and monitor these evaluations; (Sec. 112(b)(2); 20 U.S.C. 2312.) (e) Prepare and submit through the State board to the Commissioner and to the National Advisory Council an annual evaluation report, accompanied by any additional comments of the State board as the State board deems appropriate; (Sec. 105(d)(3); 20 U.S.C. 2305.) (f) Identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the State and assess the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Acts represent a consistent, integrated, and coordinated approach to meeting these needs; (Interprets Sec. 105(d)(4)(A); 20 U.S.C. 2305.)	20 USC 2312 Sec. 112(b)(2) p. 98 Comprehensive Employment and Training Act p. 357
Appropriation authorization.	"(f)(1) There are hereby authorized to be appropriated $8,000,000 for fiscal year 1978, $8,500,000 for fiscal year 1979, $9,000,000 for fiscal year 1980, $10,000,000 for fiscal year 1981, and $10,000,000 for fiscal year 1982 for the purpose of making grants to State advisory councils to carry out the functions specified in this section. From the sums appropriated pursuant to this subsection, the Commissioner shall, subject to the provisions of the following sentence, make grants to State advisory councils from amounts allotted to such advisory councils in accordance with the method for allotment contained in section 103(a)(2), to carry out the functions specified in this section,		(g) Comment, at least annually, on the reports of the State Manpower Services Council; (Sec. 105(d)(4)(B); 20 U.S.C. 2305.) (h) Prepare and submit to the Commissioner within 60 calendar days after the Commissioner's acceptance of certification of establishment and membership, submitted pursuant to Sec. 104.91(c), an annual budget covering	Comprehensive Employment and Training Act p.357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	and shall pay to each State advisory council an amount equal to the reasonable amounts expended by it in carrying out its functions under this Act in such fiscal year, except that no State advisory council shall receive an amount to exceed $200.000 or an amount less than $75,000. In the case of Guam, American Samona, Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Commissioner may pay the State advisory council in each such jurisdiction an amount less than the minimum specified in the preceding sentence if he determines that the council can perform its functions with a lesser amount.		the proposed expenditures of the State advisory council for the following fiscal year; and (Implements Sec. 105(f); 20 U.S.C. 2305.) (i) Provide technical assistance to eligible recipients and local advisory councils as may be requested by the recipients to establish and operate local advisory councils. (Sec. 105(g); 20 U.S.C. 2305.)	
	"(2) The expenditure of these funds is to be determined solely by the State advisory council for carrying out its functions under this Act, and may not be diverted or reprogramed for any other purpose by any State board, agency or individual. Each council shall designate an appropriate State agency or other public agency, eligible to receive funds under this Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.	Sec. 104.94	Meetings and rules. The State advisory council shall meet within 30 calendar days after certification has been accepted by the Commissioner and shall select from among its membership a chairperson. The time, place, manner of meetings, as well as the councils operating procedures and staffing, shall be as provided by the rules of the State advisory council. The rules shall provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State. (Sec.105(c); 20 U.S.C. 2305.)	
Local advisory councils.	"(g)(1) Each eligible recipient receiving assistance under this Act to operate vocational education programs shall establish a local advisory	Sec. 104.95	Staff and services. (a) The State advisory council is authorized; (1) To obtain the services of professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	council to provide such agency with advice on current job needs and on the relevancy of courses being offered by such agency in meeting such needs. Such local advisory councils shall be composed of members of the general public, especially of representatives of business, industry, and labor; and such local advisory councils may be established for program areas, schools, communities, or regions, whichever the recipient determines best to meet the needs of that recipient. "(2) Each State board shall notify eligible recipients within the State of the responsibilities of such recipients under the provisions of paragraph (1); and each State advisory council shall make available to such recipients and the local advisory councils of such recipients such technical assistance as such recipients may request to establish and operate such councils.		described in Sec. 104.93. Such personnel shall not include staff members of the State board and shall be subject only to the supervision and direction of the State advisory council with respect to all services performed by them. (2) To contract for such services as may be necessary to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals. (Implements sec. 105(e); 20 U.S.C. 2305.) (b) Members of the State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law, regulations, and practices applicable to persons performing comparable duties and services. (Implements Sec. 105(e); 20 U.S.C. 2305.)	
		Sec. 104.96	Fiscal control. (a) The State advisory council shall designate an appropriate State agency or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement and accounting and for having its accounts audited at least every two years. The fiscal agent shall send a copy of the audit report	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			to the Commissioner. (Implements Sec. 105(f)(2); 20 U.S.C. 2305.) (b) The expenditure of council funds is determined solely by the State advisory council for carrying out its function except as provided in Sec. 104.95(b). Council funds may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual. (Sec. 105(f)(2); 20 U.S.C. 2305.) (c) All expenditures of council funds shall be in accordance with the budget approved by the Commissioner under the authority of Sec.104.93(h) (Implements Sec. 105(f)(2); 20 U.S.C. 2305.) (d) The State advisory council shall submit to the Commissioner a financial status report within 90 days after the end of the fiscal year. (45 CFR 100b.403.)	
		Sec.104.97	Annual evaluation report. The State advisory council shall prepare and submit to the Commissioner and to the National Advisory Council on Vocational Education, through the State board, within 90 days after the end of the fiscal year an annual evaluation report under the authority of Sec. 104.93(e). This report shall include: (a) The results of the evaluations by the State Advisory council of the effectiveness of programs,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			services, and activities carried out in the year under review in meeting the program goals set forth in the five-year State plan and the annual program plan. (Sec. 105(d)(3)(A); 20 U.S.C. 2305.)	
			(b) A review of the program evaluation results developed by the State under the authority of Sec. 104.401;	
			(c) A review of the analysis of the distribution of Federal funds within the State submitted by the State according to the annual program plan and the accountability report; (Sec. 105(d)(3)(A); 20 U.S.C. 2305.)	
			(d) Recommended changes in programs, services, and activities as may be considered necessary by the State advisory council based on the results of its evaluation; (Sec. 105(d)(3)(B); 20 U.S.C. 2305.)	
			(e) Comments on the reports of the State Manpower Services Council; and (Sec. 105(d)(4)(B); 20 U.S.C. 2305.)	Comprehensive Employment and Training Act p. 357
			(f) Identification of the vocational education and employment and training needs of the State and the assessment of the extent to which vocational education, employment training, vocational rehabilitation, special education, and other programs assisted under this and related Act represent	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			a consistent, integrated, and coordinated approach to meeting such needs. (Sec. 105(d)(4)(A); 20 U.S.C. 2305.)	
			LOCAL ADVISORY COUNCILS	
		Sec.104.111	Establishment of local advisory councils. (a) Each eligible recipient (that is, each local educational agency or postsecondary educational institution which received Federal assistance under the Act) shall establish a local advisory council on vocational education. (b) The local advisory council may be established for: (1) Program areas; (2) Schools; (3) The community; or (4) The region in which the eligible recipient is located. (c) The local advisory council shall be composed of representatives of the general public including at least a representative of: (1) Business; (2) Industry; and (3) Labor. (Sec. 105(g)(1); 20 U.S.C. 2305.) (d) Each eligible recipient shall establish a local advisory council which has an appropriate representation of both sexes and an appropriate representation of the racial and ethnic minorities found in the program areas, schools, community, or region which the local advisory council serves.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(e) An eligible recipient may form a local advisory council composed of representatives from several craft committees, or representatives of several school councils, having the requisite representation in paragraph (c) of this section. (Implements Sec. 105(g)(1); 20 U.S.C. 2305.)	
		Sec.104.112	Duties of local advisory councils. (a) The local advisory council shall advise the eligible recipient on: (1) Current job needs; and (2) The relevance of programs (courses) being offered by the local educational agency or postsecondary educational agency in meeting current job needs. (Sec. 105(g)(1); 20 U.S.C. 2305.)	
			(b) The local advisory council shall consult with the eligible recipient in developing its application to the State board. (Sec. 106(a)(4)(A); 20 U.S.C. 2306.)	20 USC 2306 Sec. 106(a) (4)(A) p. 39

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"GENERAL APPLICATION		GENERAL APPLICATION	
20 USC 2306	"Sec. 106.(a) Any State desiring to receive the amount for which it is eligible for any fiscal year pursuant to this Act shall, through its State board, submit to, and maintain on file with, the Commissioner a general application providing assurances-- "(1) that the State will provide for such methods of administration as are necessary for the proper and efficient administration of the Act; "(2) that the State board will cooperate with the State advisory council on vocational education in carrying out its duties pursuant to section 105 and with the agencies, councils, and individuals specified in sections 107 and 108 to be involved in the formulations of the five-year State plan and of the annual program plans and accountability reports; "(3) that the State will comply with any requests of the Commissioner for making such reports as the Commissioner may reasonably require to carry out his functions under this Act; "(4) that funds will be distributed to eligible recipients on the basis of annual applications which-- "(A) have been developed in consultation (i) with representatives of the educational and	Sec. 104.141	Requirement for filing a general application. (a) In order to participate in programs authorized under the Act, the State board for vocational education must submit to, and maintain on file with, the Commissioner a general application. (Sec. 106(a); 20 U.S.C. 2306.) (b) This general application must be signed by the executive officer of the State board and submitted by the State board to the Commissioner by July 1, 1977, for eligibility for Federal funds under the Act. (c) This general application is filed only once with the Commissioner and shall remain in effect until the provisions of section 106 of the Act are changed or expire. (Implements Sec. 106(a); 20 U.S.C. 2306; Sen. Rept. No. 94-882, pp. 68-72.) (d) This general application is in lieu of the general application required by section 434(b) of the General Education Provisions Act. (Sec. 106(b); 20 U.S.C. 2306.) (e) The procedures to be used by the State board to carry out assurances 4, 5, 9, and 10 in the general application shall be included in the five-year State plan (Section 104.182).	General Education Provisions Act p. 267 20 USC 2309 Sec. 109(a)(1) p. 73

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	training resources available in the area to be served by the applicant and (ii) with the local advisory council required to be established by this Act to assist such recipients, "(B)(i) describe the vocational education needs of potential students in the area or community served by the applicant and indicate how, and to what extent, the program proposed in the application will meet such needs, and (ii) describe how the findings of any evaluations of programs operated by such applicant during previous years, including those required by this Act, have been used to develop the program proposed in the application,		(Implements Sec. 109(a)(1); 20 U.S.C. 2309.) (f) This general application shall contain the following 12 assurances; of these, ten are set forth in section 106(a) of Act: (1) that the State will provide for such methods of administration as are necessary for the proper and efficient administration of the Act; (2) that the State board will cooperate with the State advisory council on vocational education in carrying out its duties pursuant to section 105 and with the agencies, councils, and individuals specified in sections 107 and 108 to be involved in the formulation of the five-year State plan and of the annual program plans and accountability reports; (3) that the State will comply with any requests of the Commissioner for making such reports as the Commissioner may require to carry out his functions under this Act; (4) that funds will be distributed to eligible recipients on the basis of annual applications which-- (A) have been developed in consultation (i) with representatives of the educational and training resources available in the area to be served by the applicant and (ii) with the local advisory council required	
29 USC 801 Note	"(C) describe how the activities proposed in the application relate to manpower programs conducted in the area by a prime sponsor established under the Comprehensive Employment and Training Act of 1973, if any, to assure a coordinated approach to meeting the vocational education and training needs of the area or community, and "(D) describe the relationship between vocational education programs proposed to be conducted with funds under this Act and other programs in the area or community which are supported by State and local funds;			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	and that any eligible recipient dissatisfied with final action with respect to any application for funds under this Act shall be given reasonable notice and opportunity for a hearing; "(5)(A) that the State shall, in considering the approval of such applications, give priority to those applicants which-- "(i) are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without Federal assistance, and "(ii) propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation; and "(b) that the State shall, in determining the amount of funds available under this Act which shall be made available to those applicants approved for funding, base such distribution on economic, social and demographic factors relating to the need for vocational education among the various areas of the State, except that-- "(i) the State will use as the two most important factors in determining this distribution (I) in the case of local educational agencies, the		to be established by this Act to assist such recipients, (B)(i) describe the vocational education needs of potential students in the area or community served by the applicant and indicate how, and to what extent, the program proposed in the application will meet such needs, and (ii) describe how the findings of any evaluations of programs operated by such applicant during previous years including those required by this Act, have been used to develop the program proposed in the application, (C) describe how the activities proposed in the application relate to manpower programs conducted in the area by a prime sponsor established under the Comprehensive Employment and Training Act of 1973, if any, to assure a coordinated approach to meeting the vocational education and training needs of the area or community, and (D) describe the relationship between vocational education programs proposed to be conducted with funds under this Act and other programs in the area or community which are supported by State and local funds; and that any eligible recipient dissatisfied with final action with respect to any application for funds under this	20 USC 2461 financial ability p. 258 Comprehensive Employment and Training Act of 1973 p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	relative financial ability of such agencies to provide the resources necessary to meet the need for vocational education in the areas they service and the relative number or concentration of low-income families or individuals within such agencies, and (II) in the case of other eligible recipients, the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students and the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language; and "(ii) the State will not allocate such funds among eligible recipients within the State on the basis of per capita enrollment or through matching of local expenditures on a uniform percentage basis, or deny funds to any recipient which is making a reasonable tax effort solely because such recipient is unable to pay the non-Federal share of the cost of new programs; "(6) that Federal funds made available under this Act will be so used as to supplement,		Act shall be given reasonable notice and opportunity for a hearing; (5)(A) that the State shall, in considering the approval of such applications, give priority to those applicants which-- (i) are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without Federal assistance, and (ii) propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation: and (B) that the State shall, in determining the amount of funds available under this Act which shall be made available to those applicants approved for funding, base such distribution on economic, social and demographic factors relating to the needs for vocational education among the various populations and the various areas of the State, except that-- (i) the State will use as the two most important factors in determining this distribution (I) in the case of local educational agencies, the relative financial ability of such agencies to	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	and to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in the Act, and in no case supplant such State or local funds; "(7) that the State will make provision for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under this Act); "(8) that funds received under this Act will not be used for any program of vocational education (except personnel training programs under section 135, renovation programs under subpart 4 of part B, and homemaking programs under subpart 5 of this part) which cannot be demonstrated to prepare students for employment, be necessary to prepare individuals for successful completion of such a program, or be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation; "(9) that the State has instituted policies and procedures to insure that copies of the State plan and annual program plan and accountability		provide the resources necessary to meet the need for vocational education in the areas they service and the relative number or concentration of low-income families or individuals within such agencies, and (II) in the case of other eligible recipients, the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students and the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language; and (ii) the State will not allocate such funds among eligible recipients within the State on the basis of per capita enrollment or through matching of local expenditures on a uniform percentage basis, or deny funds to any recipient which is making a reasonable tax effort solely because such recipient is unable to pay the non-Federal share of the cost of new programs; (6) that Federal funds made available under this Act will be so used as to supplement, and to the extent practicable, increase the amount of State and local funds	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
20 USC 1241 note. 20 USC 1233c.	report and all statements of general policies, rules, regulations, and procedures issued by the State board and by any State agencies to which any responsibility is delegated by the State board concerning the administration of such plan and report will be made reasonably available to the public; and "(10) that the funds used for purposes of section 110(a) are consistent with the State plan submitted pursuant to section 613 (a) of the Education of the Handicapped Act. "(b) Such general application shall be considered to be the general application required to be submitted by the State for funds received under the Vocational Education Act of 1963 under the provisions of subsection (b) of section 434 of the General Education Provisions Act.		that would in the absence of such Federal funds be made available for the uses specified in the Act, and in no case supplant such State or local funds; (7) that the State will make provision for such fiscal control and fund accounting procedures as may be necessary to secure proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under this Act); (8) that funds received under this Act will not be used for any program of vocational education (except personnel training programs under section 135, renovation programs under subpart 4 of part B, and homemaking programs under subpart 5 of this part) which cannot be demonstrated to prepare students for employment, be necessary to prepare individuals for successful completion of such a program, or be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation; (9) that the State has instituted policies and procedures to insure that copies of the State plan and annual program plan and accountability report and all statements	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			of general policies, rules, regulations, and procedures issued by the State board and by any State agencies to which any responsibility is delegated by the State board concerning the administration of such plan and report will be made reasonably available to the public; and (10) that the funds used for purposes of section 110(a) are consistent with the State plan submitted pursuant to section 613(a) of the Education of the Handicapped Act. (Sec. 106(a): 20 U.S.C. 2306.)	Education of the Handicapped Act. p. 307
			(11) The State board shall also assure that it will cooperate with the Administrator of the National Center for Education Statistices, HEW, in supplying information and complying in its reports with the information elements and definition requirements, as specified in section 161(a) of the Act. (Implements Sec. 161(a); 20 U.S.C. 2391.)	20 USC 2391 Sec. 161(a) p. 168
			(12) The State board shall also assure that students served by Indian tribal organizations applying for or receiving funds under the Commissioner's discretionary programs, under authority of section 103(a)(1)(B) of the Act shall be afforded the opportunity to participate in vocational education programs administered by the State.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(Implements Sec. 103(a)(1)(B); 20 U.S.C. 2303.)	20 USC 2303 Sec. 103-(a)(1)(B) p. 5
		Sec. 104.182	Procedures to assure compliance with the general application. The State board in its five-year State plan shall: (a) Describe the information which the State board will require in local applications in order to meet the requirements of Sec. 104.141(f)(4); (Sec. 106(a)(4); U.S.C. 2306.) (b) Describe the procedures for affording eligible recipients reasonable notice of an opportunity for a hearing, for conducting the hearing, for providing a written record of the hearing, and for informing the recipient in writing of the decisions and reasons therefor; (Implements Sec. 106(a)(4); 20 U.S.C. 2306.) (c) Describe how the State board, for purposes of giving priority to applications, determines; (1) Economically depressed areas and areas with high rates of unemployment which are unable to provide the resources necessary to meet the vocational eduation needs without Federal assistance; and (2) Programs new to the area which are designed to meet new and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			emerging manpower needs and job opportunities in the area (and, where relevant, in the State and Nation); (Implements Sec. 106(a)(5)(A); 20 U.S.C. 2306.) (d) Describe the policies and procedures by which the State board determines how the amount of funds available under this Act will be made available to those applicants approved for funding, using the factors specified in Sec. 104.141 (f)(5)(B); (Sec. 106(a)(5)(B); 20 U.S.C. 2306.) (e) Set for the policies and procedures instituted for public disclosure in accordance with Sec. 104.141(f)(9); and (Sec. 106(a)(9); 20 U.S.C. 2306.) (f) Describe the procedures for insuring that funds for vocational programs for handicapped persons are used in a manner consistent with Sec. 104.141(f)(10). The statement shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized educational program as required by the Education of the Handicapped Act. (Sec. 106(a)(10); 20 U.S.C. 2306.)	Education of the Handicapped Act p. 307

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"FIVE-YEAR STATE PLANS		DEVELOPMENT OF FIVE-YEAR STATE PLAN	
20 USC 2307	"Sec. 107(a)(1) Any State desiring to receive funds under this Act shall submit to the Commissioner, during fiscal year 1977 and during each fifth fiscal year occurring thereafter, a State plan for vocational education for the five fiscal years succeeding each such fiscal year in which the plan is submitted. In formulating this plan, the State board shall involve the active participation of --	Sec. 104.161	Submission of five-year State plan. Any State desiring to receive funds under the Act shall submit to the Commissioner a five-year State plan by: (a) July 1, 1977, for fiscal years 1978 through 1982; and (b) July 1, 1982, for fiscal years 1983 through 1987. (Sec. 107(a)(1); 20 USC 2307)	
	"(A) a representative of the State agency having responsibility for secondary vocational education programs, designated by that agency; "(B) a representative of the State agency, if such separate agency exists, having responsibility for postsecondary vocational education programs, designated by that agency; "(C) a representative of the State agency, if such separate agency exists, having responsibility for community and junior colleges, designated by that agency; "(D) a representative of the State agency, if such separate agency exists, having responsibility for institutions of higher education in the State, designated by that agency; "(E) a representative of a local school board or committee, as determined by State law;	Sec. 104.162	Representation required in the development of the five-year State plan. In formulating its five-year State plan, the State board is required to involve the active participation of a representative of; (a) The State agency having responsibility for secondary vocational education programs, designated by that agency; (b) The State agency, if a separate agency exists, having responsibility for postsecondary vocational education programs, designated by that agency; (c) The State agency, if a separate agency exists, having responsibility for community and junior colleges, designated by that agency; (d) The State agency, if a separate agency exists, having responsibility for institutions of higher education in the State, designated by that agency;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 817	"(F) a representative of vocational education teachers, as determined by State law; "(G) a representative of local school administrators, as determined by State law; "(H) a representative of the State Manpower Services Council appointed pursuant to section 107(a)(2)(A)(i) of the Comprehensive Employment and Training Act of 1973, designated by that council; "(I) a representative of the State agency or commission responsible for comprehensive planning in postsecondary education, which planning reflects programs offered by public, private nonprofit and proprietary institutions, and includes occupational programs at a less-than-baccalaureate degree level, if such separate agency or commission exists, designated by that agency or commission; and "(J) a representative of the State advisory council on vocational education, designated by that council. This participation shall include at least four meetings during the planning year between representatives of the State board and representatives of all of these agencies, councils, and individuals, meeting as a group. The first of these meetings shall be before the plan is developed; the second meeting		(Sec. 107(a)(1); 20 U.S.C. 2307.) (e) A local school board or committee, as designated by the appropriate appointing authority under State law; (Interprets Sec. 107(a)(1)(E); 20 U.S.C. 2307.) (f) Vocational education teachers, as designated by the appropriate appointing authority under State law; (Interprets Sec. 107(a)(1)(F); 20 U.S.C. 2307.) (g) Local school administrators, as designated by the appropriate appointing authority under State law; (Interprets Sec. 107(a)(1)(G); 20 U.S.C. 2307.) (h) The State Manpower Services Council appointed under the authority of section 107(a)(2)(A)(i) of the Comprehensive Employment and Training Act of 1973, designated by that Council: (i) The State agency or commission responsible for comprehensive planning in postsecondary education, which planning reflects programs offered by public, private nonprofit, and proprietary institutions, and includes occupational programs at a less-than-baccalaureate degree level, if a separate agency or commission exists, designated by that agency or commission; and (j) The State advisory council on vocational education,	Comprehensive Employment and Training Act of 1973. p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	shall be to consider the first draft of the plan; the third meeting shall be to consider the draft of the plan rewritten to reflect the results of the second meeting; and the fourth meeting shall be to approve the final plan. If these agencies, councils, and individuals, and the State board are not able to agree upon the provisions of the State plan, the State board shall have the responsibility for reaching a final decision on those provisions; but the State board shall include in the plan (A) the recommendations rejected by the board, (B) the agency, council, or individual making each such recommendation, and (C) the reasons of the State board for rejecting these recommendations. Any agency or council described above which is dissatisfied with any final decision of the State board may appeal the board's decision to the Commissioner. In such a case the Commissioner shall afford such agency or council and the State board reasonable notice and opportunity for a hearing and shall determine whether the State board's decision is supported by substantial evidence, as shown in the State plan, and will best carry out the purposes of the Act. Any agency or State board dissatisfied with a final		designated by that council. (Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.163	Meetings of participating representatives. The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in Sec. 104.162 for at least four meetings during the development of the five-year State plan. These meetings will be convened to accomplish the following purposes: (a) First meeting: To plan for the development of the first draft of the five-year State plan; (b) Second meeting: To consider the first draft of the five-year State plan; (c) Third meeting: To consider the draft of the five-year State plan after it has been rewritten to reflect the results of the second meeting of the planning group; and (d) Fourth meeting: To recommend for adoption the final five-year State plan. (Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.164	State board adoption of the five-year State plan. (a) If the participating agencies, councils and individuals are not able to agree upon the provisions of the five-year State plan, the State board will make a final decision.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
20 USC 1233c.	action of the Commissioner under this subsection may appeal to the United States Court of Appeals for the circuit in which the State is located in accordance with the procedure specified in section 434(d)(2) of the General Education Provisions Act.		(b) In accordance with Sec. 104.171(b)(1), the State board shall include in the five-year State plan: (1) Any recommendation which is rejected by the State board indicating its source (i.e., the name of the individual and agency or council affiliation); and (2) The reasons of the State board for rejecting the recommendation. (Sec. 107(a)(1); 20 U.S.C. 2307.)	
	"(2) The State board shall, during the years in which it formulates any five-year plan required under this section, conduct a series of public hearings, after giving sufficient public notice, throughout all regions of the State in order to permit all segments of the population to give their views on the goals which ought to be adopted in the State plan, including the courses to be offered, the allocations of responsibility for these courses among the various levels of education and among the various institutions of the States, and the allocations of local, State, and Federal resources to meet those goals. These views shall be included in the final State plan with a description of how such views are reflected in the plan; and if particular views are not reflected, then the plan shall set out the reasons for rejecting them.	Sec. 104.165	Public hearings on the five-year State plan. (a) In formulating the five-year State plan, the State board is required to conduct a series of public hearings. This series of public hearings shall be conducted: (1) During the development, prior State plan; (2) After giving sufficient public notice; and (3) Throughout all regions of the State. (b) The purpose of these public hearings is to provide the opportunity for all segments of the population of the State to give their views on: (1) The goals which ought to be adopted in the State plan; (2) The programs to be offered under the State plan; (3) The allocation of responsibility for	
Submittal to Commissioner.	"(b) The five-year State plans shall be submitted to the Commissioner by the July 1st preceding the beginning			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	of the first fiscal year for which such plan is to take effect and shall-- "(1) assess the current and future needs for job skills within the State and, where appropriate, within the pertinent region of the country, through consideration of the latest available data of present and projected employment, including the data available under section 161; "(2) set out explicitly the goals the State will seek to achieve by the end of the five-year period of the State plan in meeting the need for particular job skills identified through the assessment undertaken in accordance with paragraph (1), including (A) a description of these goals in terms of--		programs (courses) among the various levels of education and among the various institutions of the State; and (4) The allocation of local, State, and Federal resources to meet these goals. (c) In accordance with Sec. 104.171(d), the State board shall include in the five-year State plan: (1) The views expressed at the public hearings or comments submitted in writing; (2) A description of how these views are reflected in the provisions of the five-year State plan; and (3) The reasons for rejecting any view which is not accepted for inclusion in the five-year State plan. (Sec. 107(a)(2); 20 U.S.C. 2307.)	
	"(i) the courses and other training opportunities to be offered to achieve those skills, "(ii) the projected enrollments of those courses and other training opportunities, "(iii) the allocations of responsibility for the offering of those courses and training opportunities among the various levels of education and among the various institutions of the State, and "(iv) the allocations of all local,	Sec. 104.181	Content of five-year State plan. The State board shall submit the five-year State plan to the Commissioner, through the appropriate HEW Regional Office, by the July 1st preceding the beginning of the first fiscal year for which the plan is to take effect. The plan shall be composed of the following two parts: (a) Procedures for carrying out certain assurances of the general application as required in Sec. 104.182; and (b) Program provisions as required in	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	State, and Federal financial resources available in the State among these		Secs. 104.183 through 104.188. (Sec. 107(b); 20 U.S.C. 2307.)	
	courses and training opportunities, levels of education, and institutions within the State, and (B) the reasons for choosing these courses and training opportunities, enrollments, allocations of responsibilities, and allocations of resources; "(3)(A) set out explicitly the planned uses of Federal, State, and local vocational education funds for each fiscal year of the State plan and show how these uses will enable the State to achieve these goals, including (i) a	Sec. 104.183	Assessment of employment opportunities. (a) The five-year State plan shall include an assessment of current and future needs for workers (job skills) within the State and, where appropriate, within the pertinent region of the country. (b) This assessment shall reflect the latest available data of present and projected employment, including the data available from the State occupational information coordinating committee. (Sec. 107(b)(1);20 U.S.C. 2307.)	
	description of these uses of funds in terms of the elements listed in clauses (2)(A)(i) through (2)(A)(iv) above, and (ii) the reasons for choosing these particular uses, except that the State will continue to use approximately the same amount of its State grant under subpart 2 of this part for programs in secondary schools during fiscal year 1978 and 1979 as it had used during fiscal years 1975 and 1976 unless the State is able to demonstrate in its five-year plan the need to shift funds from such use; "(B)(i) set out explicitly the uses which the State intends to make	Sec. 104.184	Goals to meet employment needs. The five-year State plan shall describe clearly the goals the State will seek to achieve with respect to its needs for workers identified in Sec. 104.183 by the end of the five-year period covered by the five-year State plan. This description shall be in terms of the following four elements and shall include the reasons for choosing these elements: (a) The programs (courses) and other training opportunities to be offered to meet the needs identified in Sec. 104.183; (For the purposes of this part, the term "program" refers to OE instructional programs	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	of the funds available to it under this Act, as those uses are set out in sections 120, 130, 140, and 150, and set out the reasons for choosing such uses; and (ii) set out explicitly the uses which the State intends to make of these funds to meet the special needs of handicapped and disadvantaged persons and persons who have limited English-speaking ability; "(4)(A) set forth policies and procedures which the State will follow so as to assure equal access to vocational education programs by both women and men including-- "(i) a detailed description of such policies and procedures, "(ii) actions to be taken to overcome sex discriminiation and sex stereotyping in all State and local vocational education programs, and "(iii) incentives to be provided to eligible recipients so that such recipients will-- "(I) encourage the enrollment of both women and men in nontraditional courses of study, and "(II) develop model programs to reduce sex stereotyping in all occupations; and "(B) set forth a program to assess and meet the needs of persons described in section	Sec. 104.185	as defined by the Office of Education in Handbook VI, Standard Terminology for Curriculum and Instruction in Local and State School Systems (1970), and means a planned sequence of courses, services, or activities designed to meet an occupational objective.) (b) The projected enrollments of these programs and training opportunities; (c) The allocations of responsibility for the offerings of those programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State; and (d) The allocations of all local, State, and Federal financial resources available in the State for the programs and training opportunities among the secondary, postsecondary, and adult levels of education and among the various types of institutions of the State. (Sec. 107(b)(2); 20 U.S.C. 2307.) Funding to meet employment needs. (a) The five-year State plan shall set forth precisely the planned uses of Federal, State, and local education funds for each fiscal year of the State plan; (b) The five-year State plan shall indicate	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 801 note.	120(b)(1)(L) which shall provide for (i) special courses for such persons in learning how to seek employment, and (ii) placement services for such graduates of vocational education programs and courses; and "(5) set out criteria which have been devoped for coordinating manpower training programs conducted by prime sponsors established under the Comprehensive Employment and Training Act of 1973 with vocational educational education programs assisted under this Act and for coordinating such vocational education programs with such manpower training programs.		how this allocation of funds will meet the goals identified in Sec. 104.184; (c) The description of the planned uses of funds shall be in terms of the four elements of Sec. 104.184 (this does not require duplication of Sec. 104.184(d)); (Sec. 107(b)(3)(A); 20 U.S.C. 2307.) (d) The five-year State plan shall indicate the planned uses of funds under section 120 (b)(1)(0) and section 130(b)(7) of this Act for: (1) State administration; (2) Local administration; and (Implements Sec. 107(b) (3)(A); 20 U.S.C. 2307.) (e) The five-year State plan shall set forth the reasons for choosing these particular uses of funds, except that the State will continue to use approximately the same amount of its State grant under subpart 2 (basic grant) of this part for programs in secondary schools during fiscal years 1978 and 1979 as it used during fiscal years 1975 and 1976, unless the State is able to demonstrate in its five-year State plan the need to shift funds from that use. (Sec. 107(b)(3)(A); 20 U.S.C. 2307.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 104.186	Funding to meet program (purpose) needs. (a) The five-year State plan shall set forth precisely the intended uses of funds under the Act for: (1) Basic grant programs in Sec. 104.501; (2) Program improvement and supportive services in Sec. 104.701; (3) Special programs for the disadvantaged in Sec. 104.801 (funded under section 102(b) of the Act); and (4) Consumer and homemaking education in Sec. 104.901 (funded under section 102(c) of the Act). (b) The five-year State plan shall set out the reasons for choosing the uses described in paragraph (a) of this section. (c) The five-year State plan shall set forth precisely the intended uses of Federal funds, in accordance with the minimum percentages in Secs. 104.312 and 104.313 to meet the special needs of: (1) Handicapped persons; (2) Disadvantaged persons; and (3) Persons of limited English-speaking ability. (d) The five-year State plan shall also set forth the intended allocation of State and local funds, in accordance with the matching requirements in Sec. 104.303, to meet the special needs of:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(1) Handicapped persons; (2) Disadvantaged persons; and (3) Persons of limited English-speaking ability. (Implements secs. 107(b)(3)(B), 110(a), (b); 20 U.S.C. 2307, 2310.)	20 USC 2310 Sec. 110(a) (b) p. 80
		Sec. 104.187	Policies for eradicating sex discrimination. (a) The five-year State plan shall set forth a detailed description of policies and procedures which the State will follow to assure equal access to vocational education programs by both women and men. This description shall include: (1) Actions to be taken to overcome sex discrimination and sex stereotyping in all State and local vocational education programs; (2) Incentive adopted by the State for eligible recipients to: (i) Encourage the enrollment of both women and men in nontraditional courses of study; and (ii) Develop model programs to reduce sex bias and sex stereotyping in training for and placement in all occupations. (b) The five-year State plan shall set forth a program to assess and meet the needs of persons described in Sec. 104.621. This program shall include: (1) Special courses for these persons to	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			learn how to seek employment; and (2) Placement services for these persons once they complete the vocational education program. (Sec. 107(b)(4); 20 U.S.C. 2307.)	
		Sec. 104.188	Coordination between manpower training programs and vocational education programs. The five-year State plan shall describe the mechanism established for coordinating vocational education programs with manpower training programs conducted by prime sponsors under the Comprehensive Employment and Training Act (CETA), Pub. L. 93-203, and vocational education programs assisted under this Act and CETA. (Sec. 107(b)(5); 20 U.S.C. 2307; Sen. Rept. 94-882; p. 68.)	Comprehensive Employment and Training Act of 1973. p. 357
			HEARINGS BEFORE THE COMMISSIONER ON AGENCY OR COUNCIL CHALLENGES TO THE FIVE-YEAR STATE PLAN OR THE ANNUAL PROGRAM PLAN	
		Sec. 104.281	Opportunity for a hearing. (a) Sections 107 and 108 of the Act require the Commissioner to provide a hearing to certain agencies and councils which may be dissatisfied with any final decision of the State board with respect to the proposed five-year State plan or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the annual program plan filed with the Commissioner. (b) The agencies and councils which may request a hearing are those agencies and councils set forth in Sec. 104.162(a) through (d), and (h) through (j)). A representative of an agency or council may not request a hearing in his or her individual capacity. (Secs. 107(a), 108(a); 20 U.S.C. 2307; 2308.)	20 USC 2308 Sec. 108(a) p.66
			(c) An agency or council may appeal to the Commissioner only: (1) Matters which the agency or council has recommended to the State board for inclusion in the five-year State plan or annual program plan which the State board has not accepted (Sec. 104.164); or (2) The State board's failure to follow the section 107 and section 108 process as to that agency or council. (Interprets Sec. 107(a), 108(a), 20 U.S.C. 2307, 2308.)	20 USC 2308 Sec. 108(a) p.66
		Sec. 104.282	Appeal to the Commissioner. (a) If a hearing is to be requested, the notice of appeal shall be in writing, addressed to the Commissioner and to the State board, and mailed by registered mail no later than fifteen (15) work days after the notification in writing has been received by the agency or council that	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the recommendations of the agency or council have been disapproved by the State board. (b) Pending resolution of the matter for which a hearing has been requested, the five-year State plan or annual program plan submitted by the State board, if in substantially approvable form, may be conditionally approved by the Commissioner and may be conditionally deemed the operative plan. (Implements Secs. 107(a), 108(a); 20 U.S.C. 2307, 2308.)	20 USC 2308 Sec. 108(a) p. 66
		Sec. 104.283	Hearing. (a) The Commissioner may delegate authority to an employee of the Office of Education to be the hearing officer. The hearing officer shall take testimony, consider the arguments of the parties, make findings of fact, make conclusions of law, and make recommendations to the Commissioner. (b) The hearing officer shall give each party at least fifteen (15) work days notice of the time, place, and purpose of the hearing. (c) The fifteen (15) work days notice of time and place of the hearing may be reduced or waived if all parties agree. (d) The hearing may take place in Washington, D.C., or within the State whose agency or council is appealing, at the option of the requesting party and with the hearing officer's approval.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(e) The hearing officer may adjourn the hearing to a more satisfactory time or place on the motion of the hearing officer or on motion of a party. (f) A record shall be kept of the hearing. The record may be taken by shorthand, stenotype, or mechanical or electrical means, and shall be transcribed. (Implements Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.284	Prehearing. (a) The hearing officer may require a prehearing conference. (b) The prehearing conference shall be conducted in an informal manner for the purpose of. (1) Simplification of the issues; (2) Exchange of documents; (3) Stipulation of facts; (4) Deciding on procedures at the hearing; and (5) Such other matters as may properly be dealt with to aid in expediting the orderly conduct or disposition of the hearing. (Implements Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.285	Right to counsel, witnesses, cross-examination. (a) The parties shall have the right to be represented by counsel. (b) The parties may offer evidence by witnesses appearing in person.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) Where a witness appears in person, the other party shall have the right to cross examine the witness. (d) If a witness is unable to appear in person, documentary evidence or affidavits may be accepted in lieu of personal appearance. Affidavits shall be given only the probative value of a sworn statement which has not been subjected to cross examination. (Implements Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.286	Evidence and standard of evidence. (a) Formal rules of evidence do not apply. The hearing officer shall restrict the admission of evidence to that which is material and relevant. (b) The hearing officer may request additional evidence. (c) Findings of fact shall be supported by substantial evidence. "Substantial evidence," for the purpose of this hearing, means such relevant evidence as a reasonable mind might accept to support a conclusion. (305 U.S. 197, 229 (1938).) (Implements Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.287	Determinations to be made by the hearing officer. (a) The hearing officer shall determine, with reference to the matters subject to appeal (Sec. 104.218(c));	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(1) Whether the procedural requirements of the Act have been fulfilled; (2) Whether the decisions of the State board as set forth in the five-year State plan or the annual program plan are in accordance with the law; (3) Whether the decisions of the State board in the five-year State plan or the annual program plan are based on substantial evidence; and (4) Whether the State board's decisions in the five-year State plan or the annual program plan best carry out the purposes of the Act. (Sec. 107(a)(1); 20 U.S.C. 2307.) (b) Where the hearing officer decides that the State board has conformed with the provisions of paragraphs (a), (1), (2), and (3) of this section, the hearing officer shall issue findings of fact to that effect. (c) Where the hearing officer decides that the five-year State plan or the annual program plan will best carry out the purposes of the Act, the hearing officer shall recommend a finding for the State board. (d) Where the hearing officer decides that the State board has not conformed with the provisions of paragraphs (a) (1), (2), and (3) of this Section or that the five-year State plan or the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			annual program plan will not best carry out the purposes of the Act, the hearing officer shall recommend that the plan not be approved. (Implements Sec. 107(a)(1); 20 U.S.C. 2307.)	
		Sec. 104.288	Commissioner's decision. (a) The findings of fact and recommendation of the hearing officer shall be conveyed to the parties and to the Commissioner. (b) The findings and recommendation of the hearing officer shall become the findings and decision of the Commissioner unless the Commissioner reverses the hearing Officer's findings or recommendation, in whole or in part, within fifteen (15) work days after the date the hearing officer conveys his or her findings and recommendation to the Commissioner. (Implements Sec. 107(a)(1); 20 U.S.C. 2307.) (c) The Commissioner may not unilaterally change a five-year State plan or annual program plan. The Commissioner shall approve a plan or disapprove a plan in its entirety and return it to the State board for revision. (Implements Sec. 107(a)(1); 20 U.S.C. 2307; Conf. Rept. No. 94-1701, pp. 216, 217.)	
		Sec. 104.289	Appeal by State board, or agency to the court of appeals. A State board, or agency dissatisfied with	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			a final action of the Commissioner under section 107(a)(1) of the Act may appeal to the United States Court of Appeals for the circuit in which the State is located in accordance with the procedure specified in section 434(d)(2) of GEPA. (Implements Sec. 107(a)(1); 20 U.S.C. 1232c).	General Education Provisions Act p.267
		Sec. 104.315	Expenditures for programs in secondary schools. (a) The State shall expend from its allotment for the basic grant (subpart 2) approximately the same amount of Federal funds for programs in secondary schools during fiscal years 1978 and 1979 as it had expended during fiscal years 1975 and 1976. (b) The State shall set forth in the five-year State plan its justification for the need to shift funds in the event the projected Federal expenditures for programs in secondary schools in either fiscal year 1978 or 1979 are not within 95 percent of the amount of Federal funds expended for programs in secondary schools during fiscal years 1975 and 1976. (Interprets Sec. 107(b)(3)(A); 20 U.S.C. 2307.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"ANNUAL PROGRAM PLANS AND ACCOUNTABILITY REPORTS		DEVELOPMENT OF ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT	
20 USC 2308.	"Sec. 108. (a)(1) Any State desiring to receive funds under this Act shall submit to the Commissioner an annual program plan and accountability report for each of the fiscal years included in the five-year State plan. In formulating this plan and report, the State board shall involve the active participation of the agencies, councils, and individuals who are required to be involved in formulating the five-year	Sec. 104.202	Due date of annual program plan. For each fiscal year, the annual program plan is due by the July 1st preceding the beginning of the applicable fiscal year. For example, the first annual program plan is required for fiscal year 1978 and is due in the appropriate HEW Regional Office by July 1, 1977. (Sec. 108(b); 20 U.S.C. 2308.)	
	State plan as described in section 107. This participation shall include at least three meetings during each fiscal year between representatives of the State board and representatives of all of these agencies, councils, and individuals, meeting as a group. The first of these meetings shall be before the plan and report is developed; the second meeting shall be to consider the draft of the plan and	Sec. 104.203	Due date of annual accountability report. For each fiscal year, the annual accountability report is due by the July 1st following the completion of the applicable fiscal year. For example, the first annual accountability report is required for fiscal year 1978 and is due in the appropriate HEW Regional Office by July 1, 1979. (Sec. 108(b); 20 U.S.C. 2308.)	
	report; and the third meeting shall be to approve the final plan and report. If these agencies, councils, and individuals, and the State board are not able to agree upon the provisions of the plan and report, the State board shall have the same responsibility for reaching a final decision on those provisions as it has for reaching a final decision	Sec. 104.204	Representation required in the development of the annual program plan and accountability report. In formulating the annual program plan and accountability report for any given fiscal year, the State board is required to involve the active participation of a representative of each group set forth in Sec. 104.162(a) through (j).	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	on the five-year State plan under section 107; and the same requirements shall be applicable concerning inclusion of rejected recommendations, appeal of the board's decision to the Commissioner, and judicial review as are applicable to the five-year State plan under section 107.		(Secs. 107(a)(1), 108(a)(1); 20 U.S.C. 2307, 2308.)	20 USC 2307 Sec. 107(a)(1) p. 48
Public hearing	"(2) The State board shall, during each fiscal year, conduct a public hearing, after giving sufficient public notice, on the annual planning and accountability report in order to permit all segments of the population to give their views on the provisions of the plan and report. These views shall be included in the final plan and report with a description of how such views are reflected in the plan and report; and if particular views are not reflected, then the plan and report shall set out the reasons for rejecting them.	Sec. 104.205	Meetings of participating representatives. The State board shall convene, as a group, the representatives of the agencies, councils, and individuals specified in Sec. 104.204 for at least three meetings during each fiscal year. These meetings will be convened to accomplish the following purposes: (a) First meeting: To plan for the development of the first draft of the annual program plan and the accountability report; (b) Second meeting: To consider the draft of the annual program plan and accountability report; (c) Third meeting: To recommend for adoption the final annual program plan and accountability report. (Sec. 108(a)(1); 20 U.S.C. 2308.)	
Report to Commissioner.	"(3) The annual program plan and accountability report shall be submitted to the Commissioner by the July 1st preceding the beginning of the fiscal year for which the plan is to be effective. This plan and report shall contain: "(1) planning provisions which-- "(A) set out any updating of the five-year State plan deemed necessary to reflect later or more accurate employment data or a different level of funding than was anticipated;	Sec. 104.206	State board adoption of the annual program plan and accountability report. (a) If the participating agencies, councils, and individuals are not able to agree upon the provisions of the annual program plan or the accountability report, the State board will make a final decision.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(B)(i) set out explicitly how the State during that fiscal year will comply with the uses of Federal, State, and local funds proposed for that fiscal year in the five-year plan, including a description of these uses for State administration and in terms of the elements listed in clauses (2)(A)(i) through (2)(A)(iv) of section 107, and describe how these uses of funds may differ from those proposed in the five-year plan and give the reasons for any such changes;		(b) The State board shall include in the annual program plan or, as appropriate, in the accountability report: (1) Any recommendation which is rejected by the State board indicating its source (including the name of the individual and agency or council affiliation); and (2) The reasons of the State board for rejecting the recommendation. (Sec. 108(a)(1); 20 U.S.C. 2308.)	
	"(ii) set out explicitly the uses which the State intends to make of the funds available to it under this Act for that fiscal year, as those uses are set out in sections 120, 130, 140, and 150, and describe how those uses may differ from the uses proposed in the five-year plan and give the reasons for any such changes, and set out explicitly the proposed distribution of such funds among eligible recipients, together with an analysis of the manner in which such distribution complies with the assurance given in the general application under section 106(a)(5) relating to the distribution of Federal funds; and "(C) show the results of the-- "(i) Coordination of programs funded under this Act with manpower training programs and of manpower training programs with programs funded under this Act;	Sec. 104.207	Public hearing on the annual program plan and accountability report. (a) In formulating the annual program plan and accountability report, the State board is required to conduct a public hearing. This public hearing shall be conducted: (1) During the development, prior to adoption of the annual program plan and accountability report; and (2) After giving sufficient public notice. (b) The purpose of this public hearing is to provide an opportunity for all segments of the population of the State to give their views on: (1) The goals which ought to be adopted in the annual program plan; (2) The programs to be offered under the annual program plan; (3) The allocation of responsibility for programs among the various institutions of the State; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(ii) compliance of the State plan with the provision contained in section 107(b)(4)(A) concerning providing equal access to programs by both men and women; and (iii) participation of local advisory councils required to be established under section 105(g); and "(2) reporting provisions which-- "(A) show explicitly the extent to which the State during the fiscal year preceding the submission of the plan and report has achieved the goals of the five-year plan and the degree to which the uses of Federal, State, and local funds proposed for that fiscal year in the plan have been complied with, including a description of these goals and uses in terms of the elements listed in clauses (2)(A)(i) through (2)(A)(iv) of section 107(b); "(B) show explicitly how funds available under this Act have been used during that fiscal year, including a description of the uses of these funds for state administration and among the authorized uses of funds set out in sections 120, 130, 140 and 150, and including a description of the distribution of these funds among local educational agencies and other eligible recipients in conformity with the requirements contained in section 106(a)(5), and give the		(4) The allocation of local, State, and Federal resources to meet these goals. (Interprets Sec. 108(a)(2); 20 U.S.C. 2308.) (c) The State board shall include in the annual program plan or, as appropriate, in the accountability report: (1) The views expressed at the public hearing or comments submitted in writing; (2) A description of how these views are reflected in the provisions of the annual program plan or the accountability report; and (3) The reasons for rejecting any view which is not accepted for inclusion in the annual program plan or accountability report. (Sec. 108(a)(2); 20 U.S.C. 2308.)	
		Sec. 104.221	Content of annual program plan for fiscal year 1978. A five-year State plan which includes the program provisions in Secs. 104.183 through 104.186 on a year-by-year basis will meet the requirements of the Act for the annual program plan, except that in addition to the planned uses of funds in Sec. 104.186, the plan shall also set out precisely the proposed distribution of such funds among eligible recipients, together with an analysis of the manner	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	results achieved with these funds; and "(C) contain a summary of the evaluations of programs required to be conducted by section 112 and a description of how the information from these evaluations has been, or is being, used by the State board to improve its programs.		in which such distribution complies with the assurance given in the general application and in accordance with the policies and procedures in Sec. 104.182(d). (Interprets 108(b)(1); 20 U.S.C. 2308.)	
		Sec. 104.222	Content of annual program plans for the fiscal years following 1978. The plan shall contain: (a) Any updating of the five-year State plan, as submitted under Secs. 104.183 and 104.184, considered necessary to reflect later or more accurate employment data or a different level of funding than was anticipated; (b) A description of how the uses of funds proposed for the fiscal year in Sec. 104.185 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes; (c) A description of how the uses of funds under the Act proposed for the fiscal year in Sec. 104.186 will be complied with or changed (in light of anticipated appropriations) and the reasons for the changes; (d) A description of how funds used in (b) and (c) will comply with the minimum percentages, matching, and maintenance of effort requirements in Sec. 104.301; (e) The additional provisions set forth in Sec. 104.221;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(f) The results of the: (1) Coordination of programs funded under this Act and manpower training programs; (2) Compliance of the State plan with the provisions contained in Sec. 104.187 concerning providing equal access to programs by both men and women; and (3) Participation of local advisory councils required to be established under Sec. 104.171 (e). (Implements Sec. 108(b) (1); 20 U.S.C. 2308.)	Comprehensive Employment and Training Act p.357
		Sec. 104.241	Content of the accountability report. (a) The accountability report shall: (1) Show the extent to which the State, during the fiscal year preceding the submission of the report, has achieved the goals of the approved five-year State plan, including a description in terms of the elements in Sec. 104.184; (2) Show the degree to which proposed uses of Federal, State, and local funds in Sec. 104. 222(b) have been complied with, including a description in terms of the elements in Sec. 104.185; (3) Show in detail how the funds used in Sec. 104.222(d) complied with the minimum percentage, matching, and maintenance of effort requirements in Sec. 104.301; (Implements Sec. 108(b) (2)(A).)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(4) Show in detail how funds under the Act allocated for programs in Sec. 104.186 have been used during the fiscal year, including: (i) A description of uses of funds as set out in Secs. 104.222(c); (ii) A description of the distribution of funds available for these sections among local educational agencies and other eligible recipients in conformity with Sec. 104.222(e); and (iii) The results achieved by the uses of these funds. (Sec. 108(b)(2)(B); 20 U.S.C. 2308.) (b) The accountability report shall contain: (1) A summary of the evaluation of programs conducted by the State in accordance with Secs. 104.402 and 104.404; and (2) A description of how the evaluation information has been used to improve the State's programs of vocational education, including consideration given to each recommendation in the evaluation report of the State advisory council for vocational education. (Sec. 108(b)(2)(C); 20 U.S.C. 2308.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"SUBMISSION OF PLANS; WITHHOLDING AND JUDICIAL REVIEW		APPROVAL OF FIVE-YEAR STATE PLAN AND ANNUAL PROGRAM PLAN AND ACCOUNTABILITY REPORT	
20 USC 2309	"Sec. 109. (a)(1) The Commissioner shall not approve a five-year State plan submitted under section 107 until he has made specific findings, in writing, as to the compliance of such plan with the provisions of this Act and he is satisfied that adequate procedures are set forth to insure that the assurances of the general application submitted under section 106 and the provisions of the State plan will be carried out. "(2) The Commissioner shall not approve an annual program plan and accountability report submitted under section 108 until he has made specific findings, in writing, as to the compliance of such plan and report with the provisions of this Act, and he is satisfied that adequate procedures are set forth to insure that the assurances of the general application submitted under section 107 are being carried out, and he is satisfied that the annual plan and report shows progress in achieving the goals set forth in the five-year State plan. "(3)(A) In carrying out the provisions of this subsection, the Commissioner shall provide for appropriate review of each State's five-year plan and annual program plan and report by the various	Sec. 104.261	Conditions for approval of five-year State plan. The Commissioner will not approve a five-year State plan until the Commissioner: (a) Makes specific findings in writing as to the compliance of the five-year State plan with the provisions of the Act and applicable regulations; (b) Makes a determination that adequate procedures are set forth, in accordance with Sec. 104.182, to insure that assurances of the general application will be carried out; (c) Makes a determination that adequate procedures are set forth in the five-year State plan to insure that the provisions of the plan will be carried out; (Sec. 109(a)(1); 20 U.S.C. 2309.) (d) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the five-year State plan; and (Sec. 109(a)(3)(B); 20 U.S.C. 2309.) (e) Makes a determination that the State has complied in preparing the five-year State plan	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	agencies administering programs within the Office of Education related to the vocational education programs being proposed under the State plan or the program plan and report.		with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act. (Sec. 109(a)(3)(C); 20 U.S.C. 2309.)	
	"(B) In carrying out the provisions of this subsection, the Commissioner shall not approve a State plan or annual program plan and report until he has received assurances that the personnel assigned to review programs within the State to assure equal access by both men and women under the provisions of section 104(b) have been afforded the opportunity to review the plan or program plan and report. "(C) In carrying out the provisions of this subsection, the Commissioner shall not approve a State plan or annual program plan and report unless the State has complied in compiling this plan or program plan and report with the nationally uniform definitions and information elements which have been developed pursuant to section 161. "(b)(1) The Commissioner shall not finally disapprove any State plan or program plan and report submitted under this Act, or any modification thereof, without first affording the State board submitting the plan or program plan and report reasonable notice and opportunity for a hearing.	Sec. 104.262	Conditions for approval of annual program plan and accountability report. The Commissioner will not approve an annual program plan and accountability report until the Commissioner: (a) Makes specific findings in writing as to the compliance of the annual program plan and accountability report with the provisions of the Act and applicable regulations; (b) Makes a determination that adequate procedures are set forth to insure that the assurances of the general application will be carried out; (c) Makes a determination that adequate procedures are set forth in the annual program plan and accountability report to insure that the provisions of the plan will be carried out; (d) Makes a determination that the annual program plan and accountability report show progress in achieving the goals set forth in the approved five-year State plan;, (Sec. 109(a)(2); 20 U.S.C. 2309.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(2) The Commissioner shall not disapprove any plan or program plan and report submitted under this Act solely on the basis of the distribution of State and local expenditures for vocational education. "(c) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State board, finds that-- "(1) the State plan or program plan and report has been so changed that it no longer complies with the provisions of this Act, or "(2) in the administration of the plan or program plan and report there is a failure to comply substantially with any such provision, the Commissioner shall notify such State board that		(e) Has received assurances that the full-time personnel assigned to review programs within the State to assure equal access by both men and women have been afforded the opportunity to review the annual program plan and accountability report; and (Sec. 109(a)(3)(B); 20 U.S.C. 2309.) (f) Makes a determination that the State has complied in preparing the annual program plan and accountability report with the nationally uniform definitions and information elements which have been developed under the authority of section 161 of the Act. (Sec. 109(a)(3)(C); 20 U.S.C. 2309.)	
	no further payments will be made to the State under this Act (or, in his discretion, further payments to the State will be limited to programs under or portions of the State plan or program plan and report not affected by such failure) until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, the Commissioner shall make no further payments to such State under this Act	Sec. 104.263	Notice of approval or disapproval. After reviewing the five-year State plan, the annual program plan, and the accountability report, the Commissioner will notify the State board, in writing, of the granting or withholding of approval. (Sec. 109(a), (b); 20 U.S.C. 2309.) WITHHOLDING OF APPROVAL OF PLAN	
	(or shall limit payments to programs under, or portions of, the State plan or program plan and report not affected by such failure). "(d) A State board which is dissatisfied with a final action of the Commissioner under this section may appeal	Sec. 104.271	Disapproval of plan. The Commissioner: (a) Will not finally disapprove a State plan without first affording the State board reasonable notice and opportunity for a hearing; (Sec. 109(b)(1); 20 U.S.C. 2309.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	to the United States Court of Appeals for the circuit in which the State is located, by filing a petition with such court within sixty days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for that purpose. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set aside such action, in whole or in part, temporarily or permanently, but until the filing of the record the Commissioner may modify or set aside his action. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside,		(b) Will not disapprove a State plan solely on the basis of the distribution of State and local expenditures for vocational education; (Sec. 109(b)(2); 20 U.S.C. 2309.) (c) Will give at least fifteen (15) work days written notice of the disapproval of a plan or disapproval of the method by which the State is administering the plan; and (Implements Sec. 109(c); 20 U.S.C. 2309.) (d) Will hold the hearing within the State. (Sec. 109(b)(1); 20 U.S.C. 2309.)	
			SUSPENSION AND TERMINATION OF PAYMENTS FOR NONCOMPLIANCE	
		Sec. 104.291	Suspension and termination of payments for noncompliance. Suspension and termination of payments for noncompliance shall be in accord with section 434(c) of GEPA. Section 434(c) of GEPA reads as follows: (c) Whenever the Commissioner, after reasonable notice and an opportunity for hearing, finds that there has been failure, by any recipient of funds under any applicable program, to comply substantially with terms to which such recipient has agreed in order to receive such funds, the Commissioner shall notify such recipient that further payments will not be made to such recipient under that program until	General Education Provisions Act p. 267

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	in whole or in part, any action of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this subsection shall not, unless so specifically ordered by the court, operate as a stay of the Commissioner's action.		he is satisfied that such recipient no longer fails to comply with such terms. Until the Commissioner is so satisfied, no further payments shall be made to such recipient. Pending the outcome of any termination proceeding initiated under this paragraph, the Commissioner may suspend payments to such recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken. (Sec. 109(f)(1); 20 U.S.C. 2309., 1232c.) APPEAL TO THE COURTS	
	"(e)(1) If any eligible recipient is dissatisfied with the final action of the State board or other appropriate State administering agency with respect to approval of an application by such eligible recipient for a grant pursuant to this Act, such eligible recipient may, within sixty days after such final action or notice thereof, whichever is later, file with the United States Court of Appeals for the circuit in which the State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the State board or other appropriate State administering agency.	Sec. 104.292	Appeal by State board on withholding of approval of State plan. A State board which is dissatisfied with the final action of the Commissioner after an appeal to the Commissioner on withholding of approval of a State plan may appeal to the appropriate United States Court of Appeals as provided in section 109(d) of the Act. (Sec. 109(d); 20 U.S.C. 2309.)	
	The State board or other such agency thereupon shall file in the court the record of the proceedings on which the State board or such other agency based its action, as provided in section 2112 of title 28, United States Code.	Sec. 104.293	Appeal by eligible recipients to the court of appeals. An eligible recipient dissatisfied with the final action of the State board (or other appropriate State administrative agency) with respect to approval of an	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(2) The findings of fact by the State board or other appropriate administering agency, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the State board or other such agency to take further evidence, and the State board or such other agency may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. "(3) The court shall have jurisdiction to affirm the action of the State board or other appropriate administering agency or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.		application by such eligible recipient for a grant under this Act may appeal to the appropriate United States Court of Appeals as provided in section 109(e) of the Act. (Sec. 109(e); 20 U.S.C. 2309.)	
20 USC 1233c.	"(f)(1) The Commissioner shall prescribe and implement rules to assure that any hearing conducted under section 434(c) of the General Education Provisions Act in connection with funds made available from appropriations under this Act shall be held within the State of the affected unit of local government or geographic area within the State.			
Definitions.	"(2) For the purposes of paragraph (1)--			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(A) the term 'unit of local government' means a county, municipality, town, township, village, or other unit of general government below the State level; and "(B) the term 'geographic area within a State' means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"NATIONAL PRIORITY PROGRAMS"			
20 USC 2310.	"Sec. 110. (a) For each fiscal year, at least 10 per centum of each State's allotment under section 103 from appropriations made under section 102(a) shall be used to pay up to 50 per centum of the cost of programs, services, and activities under subpart 2 and of program improvement and supportive services under subpart 3 for handicapped persons. "(b)(1) For each fiscal year, at least 20 percentum of each State's allotment under section 103 from appropriations made under section 102(a) shall be used to pay up to 50 per centum of the cost of programs, services, and activities under subpart 2 and of program improvement and supportive services under subpart 3 for disadvantaged persons (other than handicapped persons), for persons who have limited English-speaking ability, and for providing stipends authorized under section 120(b)(1)(G)." "(2) From the funds used by a State pursuant to paragraph (1), each State shall use an amount equivalent to the same percentage of the funds reserved pursuant to that paragraph as the population aged fifteen to twenty-four, inclusive, having limited English-speaking ability is to the total population of the	Sec. 104.303	Federal share of expenditures -- national priority programs. (a) The Commissioner will pay to each State an amount not to exceed 50 percent of the excess cost (i.e., costs of special educational and related services above the costs for non-handicapped students) of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for handicapped persons. (b) The Commissioner will pay to each State an amount not to exceed 50 percent of: (1) The excess cost (i.e., costs of special educational and related services above the costs for non-disadvantaged persons) of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for disadvantaged persons (other than handicapped persons); (2) The excess cost (i.e., costs of special education and related services above the costs for persons who are not classified as persons of "limited English-speaking ability") of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	State aged fifteen to twenty-four, inclusive, for providing vocational, education for such persons with limited English-speaking ability, except that such amount shall not exceed the full sum used pursuant to paragraph (1). (10) Section 110(c) of such Act is amended to read as follows: "(c) For each fiscal year, at least 15 per centum of each State's allotment under section 103 from appropriations made under section 102(a) shall be used to pay up to 50 per centum of the cost of programs, services, and activities under subpart 2 and of program improvement and supportive services under subpart 3 for (1) persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs, and (2) persons who have already entered the labor market, or are unemployed or who have completed or left high school and who are not described in paragraph (1).". "(d) Each State shall use, to the maximum extent possible, the funds required to be used for the purposes specified in subsections (a) and (b) to assist individuals described in		services in subpart 3 for persons who have limited English-speaking ability; and (3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs. (c) The Commissioner will pay to each State an amount not to exceed 50 percent of the cost of programs, services, and activities under the basic grant in subpart 2 and program improvement and supportive services in subpart 3 for: (1) Postsecondary programs for: (i) Persons who have completed or left high school; (ii) who are enrolled in organized programs of study for which credit is given toward an associate or other degree; and (iii) who are not enrolled in programs designed as baccalaureate or higher degree programs; and (2) Adult programs for: (i) Persons who have already entered the labor market; (ii) persons who are unemployed; or (iii) persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree. (Sec. 110; 20 U.S.C. 2310.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	those subsections to participate in regular vocational education programs.	Sec.104.304	Allowable expenditures for vocational education for national priority programs. A State shall use the funds allotted for national priority programs under section 110 of the Act only for expenditures which are attributable to vocational education programs, services, and activities described in Sec. 104.303. (Sec. 110; 20 U.S.C. 2310; 45 CFR 100, App. B, Part II.)	
			MINIMUM PERCENTAGES	
		Sec.104.311	Percentage requirements with respect to State distribution of Federal funds. The minimum percentages set forth in Secs. 104.312, 104.313, and 104.314 are applicable to each State's allotment under section 102(a) of the Act. (Interprets Sec. 110(a); 20 U.S.C. 2310.)	
		Sec.104.312	Minimum percentage for the handicapped. The State shall expend at least 10 percent of the allotment under section 102(a) of the Act for vocational education for handicapped persons as described in Sec. 104.303(a). The State shall use these funds to the maximum extent possible to assist handicapped persons to participate in regular vocational education programs. (Sec. 110(a); 20 U.S.C. 2310.)	Reg.104.141 (f)(10)p.45 Reg.104.182 (f) p.47

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec.104.313	Minimum percentage for the disadvantaged. (a) The State shall expend at least 20 percent of the section 102(a) allotment, subject to the conditions of paragraph (b), for the following purposes: (1) Vocational education for disadvantaged persons (other than handicapped persons) as described in Sec. 104.303 (b)(1); (2) Vocational education for persons who have limited English-speaking ability as described in Sec. 104.303 (b)(2); and (3) Stipends for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs. (Sec. 110(b); 20 U.S.C. 2310.)	
			(b) The State shall use, to the maximum extent possible, the funds expended for disadvantaged persons and persons of limited English-speaking ability to enable these persons to participate in regular vocational education programs. (Sec. 110(d); 20 U.S.C. 2310.) (c) The State shall use the following formula in determining its expenditures of funds under paragraph (a) of this section for vocational	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			education for persons who have limited English-speaking ability: (1) First determine the amount of Federal funds reserved for the purposes of paragraph (a) of this section; (2) Determine the population having limited English-speaking ability who are between the ages of 15 and 24 inclusively; (3) Determine the total population of the State aged 15 to 24 inclusively; (4) Divide step two by step three; (5) Multiply the quotient from step four by the total amount reserved for paragraph (a) of this section as indicated in step one; (6) Expend at least this amount for vocational education for persons having limited English-speaking ability. The amount expended for this purpose shall not exceed the total amount reserved for paragraph (a) of this section. For example, a State reserves $500,000 for the purposes of paragraph (a) of this section. The State determines its limited English-speaking population between the ages of 15 and 24 is 10,000. The total population of the State aged 15 to 24 is 200,000. 10,000 is divided by 200,000 and the quotient is .05. $500,000 is multiplied by .05 and the product is $25,000.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			Accordingly, the State expends at least $25,000 for vocational education for persons who have limited English speaking ability, but no more than $500,000. (Implements Sec. 110(b)(2); 20 U.S.C. 2310.)	
		Sec.104.314	Minimum percentage for postsecondary and adult. The State shall expend at least 15 percent of the section 102(a) allotment for vocational education for: (a) Postsecondary programs for: (1) Persons who have completed or left high school; (2) Who are enrolled in organized programs of study for which credit is given toward an associate or other degree; and (3) Who are not enrolled in programs designed as baccalaureate or higher degree programs; and (b) Adult programs for: (1) Persons who have already entered the labor market; (2) Persons who are unemployed; or (3) Persons who have completed or left high school and who are enrolled in organized programs of study for which credit is not given toward an associate or other degree. (Sec. 110(c); 20 U.S.C. 2310.)	20 USC 2461 postsecondary program. p.261

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			FISCAL REQUIREMENTS	
	"PAYMENTS TO STATES		FEDERAL SHARE	
20 USC 2311	"Sec. 111.(a)(1) The Commissioner shall pay, from the amount available to each State for grants under this part (except subpart 5) to eligible recipients, an amount not to exceed "(A) 50 per centum of the cost of carrying out its annual program plan as approved pursuant to section 109, other than programs and activities for persons described in section 110; "(B) 50 per centum of the cost of programs, services, and activities under subpart 2 and program improvement and supportive services under subpart 3 for persons with special needs described in sections 110(a), (b), and (c): "(C) a part of the costs of supervision and administration of vocational education programs by an eligible recipient, except that such payment shall not exceed (i) a percentage of such costs equal to the percentage of the total costs of the vocational education program of such eligible recipient paid for from this section, or (ii) 50 per centum of such costs if the non-Federal share of such costs is paid by the State from appropriations for such purpose; and "(D) 100 per centum of the cost of vocational education programs provided	Sec. 104.301	Application of Federal requirements. (a) Federal vocational education funds shall be used solely to carry out the purposes of the Vocational Education Act and the regulations in this part. All expenditures of Federal funds are subject to the conditions and requirements of the Act and regulations. (Interprets Sec. 111(a); 20 U.S.C. 2311.) (b) Federal funds shall be used to share only in expenditures which are made in accordance with: (1) Assurances of the general application; (2) Five-year State plan; and (3) Annual program plan. (Interprets Sec. 111(a); 20 U.S.C. 2311.) (c) State and local funds which are applied to the matching requirements and maintenance of efforts requirements of the Act are subject to the conditions and requirements of the Act, regulations, and five-year State plan and annual program plan. This means that every program or activity supported in whole or in part by State or local funds which are used to match Federal funds must meet the same conditions and requirements as those supported by Federal funds. (Interprets Sec. 111(a); 20 U.S.C. 2311; 20 U.S.C. 19.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	in accordance with sections 122(f), 132(b), and 140(b)(2), except that in the case of the Trust Territory of the Pacific Islands, American Samoa, and Northern Mariana Islands, such amount shall be equal to 100 per centum of such expenditures. "(2)(A) In addition, the Commissioner shall pay, from each State's allotment under section 103 from appropriations made under section 102(a), an amount not to exceed the Federal share of the cost of State administration of such plans."		(d) Only actual expenditures of State and local funds shall be accepted as part of the State's matching and maintenance of effort requirements. This means that in-kind contributions shall not be used as part of the State's matching and maintenance of effort requirements. Requirements of 45 CFR 100b.92(b) of GEPR shall not apply to this program. (Interprets Sec. 111(a); 20 U.S.C. 2311, 20 U.S.C. 19.)	
	"(B) For the purpose of this paragraph, the Federal share for any fiscal year shall be 50 per centum, except that (1) for fiscal year 1978 it shall be 80 per centum and for fiscal year 1979 it shall be 60 per centum, and (2) whenever the Commissioner determines in exceptional circumstances that for the latest fiscal year for which reliable data is available preceding fiscal year 1978 State and local expenditures for vocational education in a State exceed ten times the Federal expenditure for vocational education in that State, and that the State has an appropriate, economic, and efficient State administration of the program, the Commissioner shall set the Federal share for fiscal year 1978 for that State in	Sec. 104.302	Federal share of expenditures-- annual program plan. (a) The Commissioner will pay to each State from the funds available under Section 102(a) an amount not to exceed 50 percent of the cost of carrying out its annual program plan. (b) The State's matching share of expenditures under the annual program plan may be on a statewide basis. (c) Except for the fiscal requirements for the national priority programs described in Sec. 104.303, State administration described in Sec. 104.306, and local administration described in Sec. 104.307, it is not necessary that Federal funds be matched by non-Federal funds for each purpose and program under the Act. (Interprets Sec. 111(a); 20 U.S.C. 2311.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	excess of the Federal share specified in clause (1), but not to exceed 100 per centum. "(b)(1) No payments shall be made in any fiscal year under this Act to any local educational agency or to any State unless the Commissioner finds, in the case of a local educational agency, that the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of vocational education by that agency for the fiscal year preceding the fiscal year for which the determination was made was not less than such combined fiscal effort per student or the aggregate expenditures for that purpose for the second preceding fiscal year or, in the case of a State, that the fiscal effort per student or the aggregate expenditures of that State for vocational education in that State for the fiscal year preceding the fiscal year for which the determination was made was not less than such fiscal effort per student or the aggregate expenditures for vocational education for the second preceding fiscal year.	Sec. 104.305	Federal share of expenditures--100 percent payments. (a) The Commissioner will pay to each State an amount up to 100 percent of the cost of: (1) Cooperative vocational education programs which include students enrolled in nonprofit private schools pursuant to section 122(f) of the Act; (2) Exemplary and innovative programs which include students enrolled in nonprofit private schools pursuant to section 132(b) of the Act; and (3) Special programs for disadvantaged persons in areas of the State which have high concentrations of youth unemployment or school dropouts under section 140 of the Act. (b) The Commissioner will pay to the Trust Territory of the Pacific Islands, the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa up to 100 percent of the cost of carrying out all programs listed in Secs. 104.302 and 104.303. (Sec. 111(a)(1); 20 U.S.C. 2311.)	
	"(2) No payments shall be made in any fiscal year under this Act to any postsecondary educational institution unless the Commissioner finds that the aggregate amount per student spent by such	Sec. 104.306	Federal share of expenditures--State administration. (a) The Commissioner will pay, from the funds allotted pursuant to section 102(a) of the Act, up to 50 percent of the cost of administration of	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	institution from current funds for vocational education purposes for the fiscal year preceding the fiscal year for which the determination was made was not less than such amount spent by such institution from current funds for the second preceding fiscal year. "(3) In addition, the Commissioner shall pay, from the amount available to each State from the amount appropriated under section 102(d); an amount not to exceed 100 per centum of the cost of carrying out the purposes described in such section 102(d)."		the five-year State plan and annual program plan, except as indicated in paragraphs (b) and (c). (Sec. 111(a)(2)(B); 20 U.S.C. 2311.) (b) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 is up to 80 percent and in fiscal year 1979 is up to 60 percent. (Sec. 111(a)(2)(B); 20 U.S.C. 2311.) (c) The Federal share of the cost of administration of the five-year State plan and annual program plan in fiscal year 1978 may be in excess of 80 percent under the following conditions: (1) State and local expenditures for vocational education in a State for the latest fiscal year for which reliable data are available preceding fiscal year 1978 exceed the Federal expenditures for vocational education in that State by ten times. For example, if the Federal allocation in fiscal year 1977 is $2 million, the aggregate of State and local expenditures must be greater than $20 million; and (2) The Commissioner determines that the costs of administration of the five-year State plan and annual program plan in fiscal year 1977 were necessary for the proper and efficient performance	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			of the State's duties under the Act; and (3) The Commissioner determines that the 80 percent ceiling on the Federal share of the cost of administration is sufficient to meet the needs of the State. (d) The State shall use the following computation in determining its expenditure of Federal funds under paragraph (a) for administration of the five-year plan and annual program plan; (1) not more than 80 percent of the total amount used for State administration shall be made from the basic grant in subpart 2; (2) not more than 20 percent of the total amount used for State administration shall be made from program improvement and supportive services in subpart 3. (e) The computation in paragraph (d) of this section does not require the State to use administrative funds in an 80/20 ratio between subpart 2 and subpart 3 activities. The State may use its administrative funds in whatever distribution best meets its needs. (Interprets Sec. 111(a)(2)(B); 20 U.S.C. 2311.)	
		Sec. 104.307	Federal share of expenditures--local administration. (a) The Commissioner will pay, from the funds	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			allotted pursuant to section 102(a) of the Act, a part of the costs of supervision and administration of vocational education programs carried out by an eligible recipient. (b) The eligible recipient shall use either the method set forth in subparagraph (1) or subparagraph (2) of this paragraph in determining the payment of local administrative costs. (1) The percentage of Federal funds used by an eligible recipient for the costs of supervision and administration of vocational education programs may be no greater than the percentage of Federal funds used to support the total vocational education program carried out by the eligible recipient. For example, the total cost of the vocational education program of the eligible recipient is $100,000 and the Federal contribution to this eligible recipient is $25,000, or 25 percent of the total. If local administrative costs are $10,000, then up to 25 percent of this amount, or $2,500, may be charged against the Federal funds. (2) Up to 50 percent of the cost of supervision and administration of the vocational education program of the eligible recipient may be charged to the Federal funds: Provided, That State funds match the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			Federal funds dollar for dollar. State funds used to match Federal funds shall be specifically made available for the purpose of local administration. For example, if the total cost of local administration is $10,000, then up to $5,000 may be charged to the Federal funds as long as the State contributes the same amount from a specific State appropriation. (c) The State shall use the following computation in determining the amount of Federal funds available for the costs of local supervision and administration: (1) Not more than 80 percent of the total amount used for supervision and administration by eligible recipients shall be made from the basic grant in subpart 2. (2) Not more than 20 percent of the total amount used for supervision and administration by eligible recipients shall be made from program improvement and supportive services in subpart 3. (d) The computation in paragraph (c) of this section does not require the State to use administrative funds in an 80/20 ratio between subpart 2 and subpart 3 activities. The State may use its administrative funds in whatever proportion best meets its needs. (Interprets Sec. 111(a); 20 U.S.C. 2311.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			MAINTENANCE OF EFFORT	
		Sec. 104.321	Maintenance of fiscal effort at the State level. A State shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared to the amount expended in the previous year. (Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.322	Withholding of payments. The Commissioner will not make any payments to a State in a fiscal year unless the Commissioner finds that the fiscal effort of the State for vocational education on a per student basis or on an aggregate basis in the previous fiscal year was not less than the fiscal effort of the State on a per student basis or on an aggregate basis in the second preceding fiscal year. (Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.323	Five percent rule. Total State fiscal effort for vocational education in the preceding fiscal year shall not be considered reduced from the fiscal year effort of the second preceding fiscal year unless the per student expenditure or aggregate expenditure in the preceding year is less than that in the second preceding fiscal year by more than five percent. For example, a State which	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			expends an aggregate of $10 million for vocational education in one fiscal year and an aggregate of $9,600,000 in the succeeding fiscal year will not be considered to have reduced fiscal effort for the purposes of the Vocational Education Act. (Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.324	Unusual circumstance rule. Any reduction in fiscal effort for any fiscal year by more than five percent will disqualify the State from receiving Federal funds unless the State is able to demonstrate to the satisfaction of the Commissioner the following: (a) In the preceding fiscal year, the reduction was occasioned by unusual circumstances that could not have been fully anticipated or reasonably compensated for by the State. Unusual circumstances may include unforeseen decreases in revenues due to the decline of the tax base; (b) In the second preceding fiscal year, contributions of large sums of monies from outside sources were made; or (c) In the second preceding fiscal year, large amounts of funds were expended for long-term purposes such as construction and acquisition of school facilities or the acquisition of	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			capital equipment. (Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.325	Maintenance of fiscal effort at the local level. A local educational agency shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous fiscal year. (Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.326	Withholding of payments. A State shall not make payment under this Act to a local educational agency unless the State finds that the combined fiscal effort of the State and local educational agency on a per student basis or on an aggregate basis of the local educational agency and the State, was not less than the combined fiscal effort in the second preceding fiscal year. (Sec. 111(b)(1); 20 U.S.C. 2311.)	
		Sec. 104.327	Exceptions. The 5 percent rule applicable to the State in Sec. 104.323 and the unusual circumstances rule in Sec. 104.324 are also applicable to local educational agencies. (Interprets Sec. 111(b)(1); 20 U.S.C. 2311.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 104.328	Maintenance of fiscal effort by postsecondary educational institutions. A postsecondary educational institution shall maintain its fiscal effort on either a per student basis or on an aggregate basis for vocational education compared with the amount expended in the previous year. (Sec. 111(b)(2); 20 U.S.C. 2311.)	
		Sec. 104.329	Withholding of payments. A State shall not make any payment under this Act to a postsecondary educational institution unless the State finds that the fiscal effort on a per student basis or on an aggregate basis of that institution, with respect to the provision of vocational education, was not less than the fiscal effort of that institution in the second preceding fiscal year. (Sec. 111(b)(2); 20 U.S.C. 2311.)	
		Sec. 104.330	Exceptions. The 5 percent rule applicable to the State in Sec. 104.323 and the unusual circumstances rule in Sec. 104.324 are also applicable to postsecondary educational institutions. (Interprets Sec. 111(b)(2); 20 U.S.C. 2311.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"FEDERAL AND STATE EVALUATIONS		STATE EVALUATION	
20 USC 2312	"Sec. 112.(a) In order for the Federal government to assist the States in operating the best possible programs of vocational education-- "(1) the Commissioner shall within four months of the receipt of a State's annual program plan and accountability report transmit to that State board an analysis of such plan and report, including suggestions for improvements in the State's programs and findings contained in any program or fiscal audits performed in that State pursuant to paragraph (2); and "(2) the Bureau of Occupational and Adult Education shall, in at least ten States a fiscal year during the period beginning October 1, 1977, and ending September 30, 1982, conduct a review analyzing the strengths and weaknesses of the programs assisted with funds available under this Act within those States; and the Department of Health, Education, and Welfare shall, in the same period, conduct fiscal audits of such programs within those States. "(b)(1) In order for the States to assist local educational agencies and other recipients of funds in operating the best possible programs of vocational	Sec. 104.401	Purpose. The State evaluations are to be used to assist local educational agencies and other recipients of funds in operating the best possible programs of vocational education and to improve the State's programs of vocational education. (Sec. 112(b)(1); 20 U.S.C. 2312.)	
		Sec. 104.402	Evaluation by State board. The State board shall, during the five-year period of the State plan, evaluate in quantitative terms the effectiveness of each formally organized program or project supported by Federal, State, and local funds. These evaluations shall be in terms of: (a) Planning and operational processes, such as: (1) Quality and availability of instructional offerings; (2) Guidance, counseling, and placement and follow-up services; (3) Capacity and condition of facilities and equipment; (4) Employer participation in cooperative programs of vocational education; (5) Teacher/pupil ratios; and (6) Teacher qualifications. (b) Results of student achievement as measured, for example, by:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	education-- "(A) each State shall, during the five-year period of the State plan, evaluate the effectiveness of each program within the State being assisted with funds available under this Act; and the results of these evaluations shall be used to revise the State's programs, and shall be made readily available to the State advisory council; and "(B) each State shall evaluate, by using data collected, wherever possible, by statistically valid sampling techniques, each such program within the State which purports to import entry level job skills according to the extent to which program completers and leavers-- "(i) find employment in occupations related to their training, and "(ii) are considered by their employers to be well-trained and prepared for employment, except that in no case can pursuit of additional education or training by program completers or leavers be considered negatively in these evaluations.		(1) Standard occupational proficiency measures; (2) Criterion referenced tests; and (3) Other examinations of students' skills, knowledge, attitudes, and readiness for entering employment successfully. (c) Results of student employment success as measured, for example, by: (1) Rates of employment and unemployment; (2) Wage rates; (3) Duration of employment; and (4) Employer satisfaction with performance of vocational education students as compared with performance of persons who have not had vocational education. (d) The results of additional services, as measured by the suggested criteria under paragraphs (a), (b), and (c) of this section, that the State provides under the Act to these special populations: (1) Women; (2) Members of minority groups; (3) Handicapped persons; (4) Disadvantaged persons; and (5) Persons of limited English-speaking ability. (Implements Sec. 112(b)(1); 20 U.S.C. 2312.)	
	"(2) Each State, in formulating its plans to fulfill these requirements, shall annually consult with the State advisory council which shall assist the State in developing these plans, monitor the evaluations conducted	Sec. 104.403	Use of results of evaluation. (a) The results of the evaluation shall be used as a basis to revise and improve the programs conducted under the approved	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	by the State, and use the results of these evaluations in compiling its annual report required by section 105.		five-year State plan. (b) The State board shall make the results of the evaluations readily available to the State advisory council on vocational education. (Sec. 112(b)(1)(A); 20 U.S.C. 2312.)	
Report to Congress.	"(C) The Commissioner shall prepare and submit annually to the Congress, within nine months of the termination of each fiscal year, a report on the status of vocational education in the country during that fiscal year. This report shall include data on the information elements developed in the national vocational education data reporting and accounting system and an analysis of such data, and a summary of the findings of the reviews and audits required by paragraph (2) of subsection (a) and of the evaluations performed pursuant to paragraphs (1) and (2) of subsection (b).	Sec. 104.404	Special data on completers and leavers. (a) The State shall evaluate, using wherever possible statistically valid sampling techniques, the effectiveness of each program of vocational education which purports to teach entry-level job skills. (b) The State shall evaluate each of these programs in order to ascertain the extent to which both those students who complete a program and those students who leave before completing a program: (1) Find employment in occupations related to their training; and (2) Are considered by their employers to be well-trained and prepared for employment. (Sec. 112(b)(1)(B); 20 U.S.C. 2312.) (c) The State shall use the following definitions for "program completer" and "program leaver"; (1) "Program completer" means a student who finishes a planned sequence of courses, services, or activities designed to meet an occupational objective and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			which purports to teach entry-level job skills; and (2) "Program leaver" means a student who has been enrolled in and has attended a program of vocational education (which is part of a planned sequence of courses, services or activities designed to meet an occupational objective and which purports to teach entry-level job skills) and has left the program without completing it, except that no student shall be counted as a program leaver who is still enrolled in another program of vocational education. The term "program leaver" includes: (i) Persons who leave the program voluntarily before its formal completion because they have acquired sufficient entry-level job skills to work in the field, and who have taken a job related to their field of training; and (ii) All other leavers. (d) For the purposes of this section, a State shall report separately on program completers and program leavers in accordance with the survey instructions and sampling standards to be provided by the National Center for Educational statistics, HEW, as follows: (1) Those who secure employment in the occupation for which they were trained or in occupations	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			related to their vocational training, including the military; (2) Those in paragraph (d)(1) of this section considered by their employers to be well trained and prepared for employment; (Secs. 112(b)(1),(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391.) (3) Those who are enrolled for additional education and training; and (4) Those in none of the above categories.	
			(Implements Secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391.)	20 USC 2391 Sec. 161-(a)(3)(B) p. 169
			(e) Persons who are enrolled for additional education and training shall not be counted as "leavers" in the evaluation data. (Secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391.)	20 USC 2391 Sec. 161-(a)(3)(B) p. 169
			(f) The evaluation data on completers and leavers shall be collected at a date to be specified by the National Center for Educational Statistics, HEW. (Implements Secs. 112(b)(1)(B), 161(a)(3)(B); 20 U.S.C. 2312, 2391.)	20 USC 2391 Sec. 161-(a)(3)(B) p. 169
		Sec. 104.405	Assurance of compatible data. In order to assure that the data on program completers and leavers are compatible and can be aggregated and reported for all of the States,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			each State shall utilize in its data collection and reporting the information elements and uniform definitions which are developed for the national vocational education data reporting and accounting system, as required by section 161 of the Act. (Sec. 161(a)(3)(B); 20 U.S.C. 2391.)	20 USC 2391 Sec. 161-(a)(3)(B) p. 169
	"SUBPART 2--BASIC GRANT		SUBPART 2--BASIC GRANT	
	"AUTHORIZATION OF GRANTS AND USES OF FUNDS		GENERAL PURPOSES	
20 USC 2330	"Sec. 120 (a) From the sums made available for grants under this subpart pursuant to section 103, the Commissioner is authorized to make grants to States to assist them in conducting vocational education programs and other programs, services, and activities operated in accordance with the requirements of this subpart.	Sec. 104.501	Authorization of grants. A State shall use its basic grant, which is equal to 80 percent of the funds allotted pursuant to section 102(a) of the Act, for the purposes set forth in Sec. 104.502. (Secs. 103(e), 120(a); 20 U.S.C. 2303, 2330.)	20 USC 2303 Sec. 103(e) p. 12
	"(b)(1) Grants to States under this subpart may be used, in accordance with five-year State plans and annual program plans approved pursuant to section 109, for the following purposes: "(A) vocational education programs; "(B) work study programs as described in section 121; "(C) cooperative vocational education programs as described in section 122; "(D) energy education programs as described in section 123;	Sec. 104.502	Use of funds under the basic grant. (a) The State shall expend not less than $50,000 for each fiscal year from the funds available under the basic grant (sec 120 of the Act) for the support of full-time personnel to perform the functions set forth in Secs. 104.71 through 104.76. (Sec. 104(b), 120 (b)(1)(F); 20 U.S.C. 2304. 2330.) (b) The State shall expend not less than an amount of funds it deems necessary for each fiscal year from the funds available under the	20 USC 2304 Sec. 104(b) p. 16

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(E) construction of area vocational education school facilities; "(F) support of full-time personnel to perform the duties described in section 104(b); "(G) the provision of stipends, subject to the restriction contained in paragraph (2), which shall not exceed reasonable amounts, as prescribed by the Commissioner pursuant to regulations, for students entering or already enrolled in vocational education programs, if those students have acute economic needs which cannot be met under work-study programs; "(H) placement services for students who have successfully completed vocational education programs, subject to the restriction contained in paragraph (2); "(I) industrial arts programs where such programs will assist in meeting the purposes of this Act; "(J) support services for women who enter programs designed to prepare individuals for employment in jobs which have been traditionally limited to men, including counseling as to the nature of such programs and the difficulties which may be encountered by women in such programs, and job development and job followup services; "(K) day care services for children of students in secondary and post-		basic grant (section 120 of the Act) for special programs and placement services which are tailored to meet the needs of the group identified in Sec. 104.621. The scope of these vocational education programs is described in (Sec. 107(b)(4)(B); 20 U.S.C. 2307.) (c) The State may use the balance of the funds available under the basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for any of the following purposes: (1) Vocational education programs, described in Sec. 104.511; (2) Work-study programs, described in Sec. 104.521; (3) Cooperative vocational education programs, described in Sec. 104.531; (4) Energy education programs, described in Sec. 104.541; (5) Construction of area vocational education school facilities, described in Sec. 104.551; (6) Provision of stipends, described in Sec. 104.571; (7) Placement services for students who have successfully completed vocational education programs, described in Sec. 104.581; (8) Industrial arts programs, described in Sec. 104.591; (9) Support services for women, described in	20 USC 2307 Sec. 107-(b)(4)(B) p. 54

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	secondary vocational education programs; "(L) vocational education for-- "(i) persons who had solely been homemakers but who now, because of dissolution of marriage, must seek employment; "(ii) persons who are single heads of households and who lack adequate job skills; "(iii) persons who are currently homemakers and part-time workers but who wish to secure a full-time job; and "(iv) women who are now in jobs which have been traditionally considered jobs for females and who wish to seek employment in job areas which have not been traditionally considered job areas for females, and men who are now in jobs which have been traditionally considered jobs for males and who wish to seek employment in job areas which have not been traditionally considered job areas for males;		Sec. 104.611; (10) Day care services for children of students in secondary and postsecondary vocational education programs, described in Sec. 104.611; and (11) Construction and operation of residential vocational schools, described in Sec. 104.631; (12) Provision of vocational training through arrangements with private vocational training institutions or other existing institutions capable of carrying out vocational education programs, described in Sec. 104.514; (13) State administration of the five-year State plan and annual program plan, described in Sec. 104.306; and (14) Local supervision and administration of vocational education programs, services and activities, described in Sec. 104.307. (Sec. 120(b); 20 U.S.C. 2330.) VOCATIONAL EDUCATION PROGRAMS	
	"(M) construction and operation of residential vocational schools as described in section 124; "(2) No funds shall be used for the purposes specified in subparagraph (G) or (H) of paragraph (1) unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to inadequate funding in other	Sec. 104.511	Use of funds. (a) A State may use funds under its basic grant (section 120 of the Act) for vocational education programs which are described in its approved five-year State plan and annual program plan. (b) Vocational education programs mean "organized educational programs which are	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	programs providing similar activities or due to the fact that other services in the area are inadequate to meet the needs. "(N) provision of vocational training through arrangements with private vocational training institutions where such private institutions can make a significant contribution to attaining the objectives of the State plan, and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions; and "(O) subject to the provisions of section 111, the costs of supervision and administration of vocational education programs by eligible recipients, and State administration of the five-year plan submitted pursuant to section 107 and of the annual program plan submitted pursuant to section 108, except that not more than 80 per centum of the amount of payments determined under section 111 for such purposes shall be made from grants under this subpart."		directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation (upgrading and retraining) for a career requiring other than a baccalaureate or advanced degree, and, for the purpose of this paragraph, the term 'organized education program' means only instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and the acquisition, maintenance, and repair of instructional supplies, teaching aids, and equipment, and the term 'vocational education' does not mean the construction, acquisition or initial equipment of buildings, or the acquisition or rental of land." (Secs. 120(b)(1)(A), 195(1); 20 U.S.C. 2330, 2461.)	20 USC 2461 Vocational Instruction p. 265
		Sec. 104.512	Vocational instruction. (a) For the purposes of these regulations, vocational instruction means instruction which is designed upon its completion to prepare individuals for employment in a specific occupation or a cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(b) Vocational instruction may include: (1) Classroom instruction; (2) Shop, laboratory, and classroom related field work; (3) Programs providing occupational work experience, and related instructional aspects of apprenticeship programs subject to the provisions of Sec. 104.515; (4) Remedial programs which are designed to enable individuals, including persons of limited-English speaking ability, to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefiting from such instruction; and (5) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in Sec. 104.513. (c) Vocational instruction may be provided to either: (1) Those preparing to enter an occupation upon the completion of the instruction; or (2) Those who have already entered an occupation but desire to upgrade or update their occupational skills and knowledge in order to achieve stability or advancement in employment.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(Implements Sec. 120(b)(1)(A); 20 U.S.C. 2330.)	
		Sec. 104.513	Activities of vocational education student organizations. (a) A State may use funds under its basic grant to support activities of vocational education student organizations which are described in its approved five-year State plan and annual program plan and which are: (1) An integral part of the vocational instruction offered; (2) Supervised by vocational education personnel who are qualified in the occupational area which the student organization represents; and (3) Available to all students in the instructional program without regard to membership in any student organization. (b) An integral part of vocational instruction includes; (1) Training in an organized educational program which is directly related to the preparation of individuals for paid or unpaid employment in a career requiring other than a baccalaureate or higher degree; or (2) Field or laboratory work incident to the vocational training; or (3) Development and acquisition of	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			instructional materials, supplies, and equipment for instructional services. (c) An integral part of vocational instruction does not include: (1) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage; (2) Purchase of supplies, jackets, and other effects for students' personal ownership; (3) Cost of non-instructional activities such as athletic, social, or recreational events; (4) Printing and disseminating non-instructional newsletters; (5) Purchase of awards for recognition of students, advisors, and other individuals; or (6) Payment of membership dues. (Implements Sec. 120(b)(1); 20 U.S.C. 2330; 31 U.S.C. 551.)	
		Sec. 104.514	Vocational instruction under contract. (a) A State may make provision for any portion of the program of instruction on an individual or group basis by private (for profit or non-profit) vocational training institutions (subject to the requirements of paragraph (c) of this section) or other existing institutions capable of carrying out vocational programs through a	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			written contract with the State board or local educational agency. The contract shall describe the portion of instruction to be provided by the institution and incorporate the standards and requirements of vocational instruction set forth in the regulations in this subpart and the approved five-year State plan. (b) The contract for instruction shall be entered into only upon a determination by the State board or local educational agency that: (1) The contract is in accordance with State and local law; and (2) The instruction to be provided under contract will be conducted as a part of the vocational education program of the State and will constitute a reasonable and prudent use of funds available under the approved five-year State plan. (c) The State board or local education agency may make arrangements with private (for profit or non-profit) vocational training institutions for the provision of vocational education where the State board or local educational agency determines: (1) The private vocational training institutional can make a significant contribution to attaining the objectives of the five-year State	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			plan and can provide substantially equivalent training at a lesser cost; or (2) The private vocational training institution can provide equipment or services not available in public institutions. (d) The State board or local educational agency shall review the contracts with the institutions at least once a year. (Implements Sec. 120(b)(1)(A); 20 U.S.C. 2330; Sen. Rept. 94-882, p. 67.)	
		Sec. 104.515	Apprenticeship programs. The five-year State plan may provide for related instruction for apprentices who are employed to learn skilled trades. If such programs of instruction are offered, the plan must set forth the following assurances: (a) The vocational training is supplemental to the on-the-job training experience of the apprentice. (b) The worker involved in the apprenticeable occupation must be at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law. (c) The apprentice training agreement must specify a given length of planned work experience training through employment on the job which is supplemented by	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			related instruction. (d) The skilled trade must possess all of the following characteristics: (1) It is customarily learned in a practical way through training and work on the job; (2) It is clearly identified and commonly recognized throughout an industry; (3) It involves manual, mechanical, technical skills and knowledge; and (4) It provides equal access to both sexes. (e) Apprentices will be classified as follows: (1) Registered. (i) Where the program or the apprentice, or both, are registered under the apprenticeship law of the State in which the apprentice is employed; (ii) Where the program or the apprentice, or both, are registered by a State apprenticeship agency operating under powers vested in it by legally responsible State authority; and (iii) Where the program or the apprentice, or both, are registered by the Bureau of Apprenticeship and Training, U.S. Department of Labor, under "standards" or "fundamentals" approved by the Federal Committee on Apprenticeship. Such registration or recognition exists only where neither conditions in paragraph (e)(1)(i) nor paragraph (e)(1)(ii) of this section exist.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(2) Non-registered. Where the program or the apprentice, or both, are not registered under any of the three conditions in paragraphs (e)(1)(i) (ii) and (iii) of this section, but a noncertifiable apprenticeship program is conducted under an implied or written agreement between the apprentice and an individual employer, a group of employees, employer-employee committees, or a governmental agency. (3) The standards of apprenticeship programs must adhere to the requirements outlined in 29 CFR Part 29 (Department of Labor Apprenticeship Programs). (29 U.S.C. 50.)	
			WORK-STUDY PROGRAMS	
		Sec. 104.521.	Use of funds. A State may use funds under its basic grant (section 120 of the Act) for approved work-study programs, which are described in its approved five-year State plan and annual program plan. (Sec. 102(b)(1)(B); 20 U.S.C. 2330.)	
		Sec. 104.522	Policy and procedures for work-study programs. A State conducting work-study programs under Sec. 104.521 shall set forth in the approved five-year State plan; (a) An assurance that the State will adopt policies and procedures	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			to insure that Federal funds used for this purpose will be expended solely for the payment or compensation of students employed pursuant to work-study programs which meet the requirements of Sec. 104.523; and (b) The principles for determining the priority to be accorded applications from local educational agencies for work-study programs. These principles shall give preference to applications submitted by local educational agencies serving communities having substantial numbers of youths who have dropped out of school or who are unemployed. Work-study programs shall be funded in the order determined by the application of these principles. (Sec. 120(b)(1)(B), 121(b); 20 U.S.C. 2330, 2331.)	20 USC 2331 Sec. 121(b) p. 126
			CONSTRUCTION OF AREA VOCATIONAL EDUCATION SCHOOL FACILITIES	
		Sec. 104.551	Use of funds. A State may use funds under its basic grant (section 120 of the Act) to pay costs of constructing area vocational education school facilities, in accordance with the approved five-year State plan and annual program plan. (Sec. 120(b)(1)(E); 20 U.S.C. 2330.)	
		Sec. 104.553	Construction requirements. An area vocational	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			education school facility constructed under provisions of Secs. 104.551 and 104.552 must meet the requirements of (a) nondiscrimination provisions in 45 CFR Part 80. This includes 45 CFR 80.3 (b)(3) which provides that, in determining the site or location of the facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin, Subpart K--"Construction Requirements" in the General Education Provisions Regulations, 45 CFR 100b.155 through 100b.192, and (c) the Architectural Barriers Act of 1968, 42 U.S.C. 4151, pertaining to standards for design, construction and alteration of buildings. (Sec. 120(b)(1)(E); 20 U.S.C. 2330; 45 CFR 100b.157 through 100b.192 42 U.S.C. 4151.)	
			PROVISION OF STIPENDS	
		Sec. 104.571	Use of funds. A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for the provision of stipends for students entering or already enrolled in vocational education programs if these students have acute economic needs which cannot be	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			met under work-study programs, subject to the restrictions in Sec. 104.572. (Sec. 120(b)(1)(G); 20 U.S.C. 2330.)	
		Sec. 104.572	Restrictions on payment of stipends. No funds shall be used for the payment of stipends to students entering or already enrolled in programs of vocational education unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to: (a) Inadequate funding in other programs providing similar activities; or (b) Other services in the area that are inadequate to meet the needs. (Sec. 120(b)(1)(G); 20 U.S.C. 2330.)	
		Sec. 104.573	Application for payment of stipends by eligible recipients. An eligible recipient desiring to provide stipends for eligible students under secs. 104.571 and 104.572 shall include a request for funds in the application submitted to the State board and shall provide in the application an assurance that each applicant to be approved meets the requirements of Secs. 104.571 and 104.572. (Sec. 102(b)(1)(G); 20 U.S.C. 2330.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 104.574	Rates for stipends. Students entering or already enrolled in vocational education programs may be paid stipends at a rate not to exceed the higher of: (a) The minimum wage prescribed by State or local law multiplied by the number of hours per week the student is enrolled in the vocational education program; or (b) The minimum hourly wage set out under 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, multiplied by the number of hours per week the student is enrolled in the vocational education program. (Implements Sec. 120(b)(1)(G); 29 CFR 95.34(c); 20 U.S.C. 2330.)	
			PLACEMENT SERVICES FOR STUDENTS WHO HAVE SUCCESSFULLY COMPLETED VOCATIONAL EDUCATION PROGRAMS	
		Sec. 104.581	Use of funds. A State may use funds under its basic grant (section 120 of the Act), in accordance with the approved five-year State plan and annual program plan, for providing placement services for students who have successfully completed vocational education programs, subject to restrictions in Sec. 104.582. (Sec. 120(b)(1)(H); 20 U.S.C. 2330.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 104.582	Restrictions on placement services. A State shall not use funds for placement services for students who have successfully completed vocational education programs, unless the State board first makes a specific finding in each instance of funding that the funding of this particular activity is necessary due to: (a) Inadequate funding in other programs providing similar activities; or (b) Other services in the area that are inadequate to meet the needs. For example, if insufficient funds are available under Section 134(a)(3) for the placement of students successfully completing vocational education programs, the State may use the funds under the basic grant for this purpose. (Sec. 120(b)(2); 20 U.S.C. 2330.)	
		Sec. 104.583	Application for funds by eligible recipients. An eligible recipient desiring to provide placement services to students who have successfully completed vocational education programs under Sec. 104.581 shall: (a) Include the request for funds in the local application submitted to the State board; and (b) Provide assurances that all placement services to be provided meet the requirements of Sec.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			104.582. (Sec. 120(b)(1)(H); 20 U.S.C. 2330.)	
			INDUSTRIAL ARTS	
		Sec. 104.591	Use of funds. A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan, for industrial arts programs which meet the requirements set forth in Sec. 104.592. (Sec. 120(b)(1)(I); 20 U.S.C. 2330.)	
			SUPPORT SERVICES FOR WOMEN	
		Sec. 104.601	Use of funds. A State may use funds under its basic grant (section 120 of the Act), when included in its approved five-year State plan and annual program plan for support services for women who enter vocational education programs designed to prepare individuals for employment in jobs which have been traditionally limited to men. (Sec. 120(b)(1)(J); 20 U.S.C. 2330.)	
		Sec. 104.602	Types of support services. Support services to be provided under Sec. 104.601 include: (a) Counseling. Counseling women entering and enrolled in nontraditional programs on the nature of these programs and on the ways of overcoming the difficulties which may be	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			encountered by women in these programs. Counselors may furnish supportive services to assist students in adjusting to the new employment requirements. (Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330.) (b) Job development. Programs and activities in the area of job development include the provision of materials and information concerning the world of work which present women students entering, enrolled in, or interested in nontraditional programs the options, opportunities, and range of jobs available in these nontraditional fields. Job development support services may also be carried out through bringing persons employed in these nontraditional fields into the schools, as well as providing opportunities for women students to visit the work place of business and industry so as to afford them a clear understanding of the nature of the work, including an understanding of the work setting in which these jobs are performed. (Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 94-1085, pp. 23-25.) (c) Job follow-up support. Support services may be provided to assist women students in finding employment	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			relevant to their training and interests. Follow-up services may be provided to assist students in the work force and dealing with barriers which women face in working in these nontraditional areas. (Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330)	
		Sec. 104.603	Support to increase number of women instructors. In funding programs and activities of support services for women, funds may be used to increase the number of women instructors involved in the training of individuals in programs which have traditionally enrolled mostly males, so as to provide supportive examples for these women who are preparing for jobs in these nontraditional areas of employment. (Implements Sec. 120(b)(1)(J); 20 U.S.C. 2330; H.R. Rept. No. 1085, p. 24.)	
			DAY CARE SERVICES FOR CHILDREN OF STUDENTS	
		Sec. 104.611	Use of funds. A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, to provide day care services for children of students (both male and female and including single parents) in secondary and post-secondary vocational	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			education programs. (Sec. 120(b)(1)(K); 20 U.S.C. 2330.)	
		Sec. 104.612	Day care services. (a) Day care services shall be for the purpose of providing appropriate care and protection of infants, pre-school and school-age children in order to afford students who are parents the opportunity to participate in vocational education programs. (b) The day care services provided under this section shall be governed by the Federal Interagency Day Care Requirements (45 CFR Part 71). (Implements Sec. 120(b)(1)(K); 20 U.S.C. 2330.)	
			VOCATIONAL EDUCATION PROGRAMS FOR DISPLACED HOMEMAKERS AND OTHER SPECIAL GROUPS	
		Sec. 104.621	Use of funds. A State shall use funds under its basic grant (section 120 of the Act) in accordance with its approved five-year State plan and annual program plan to provide vocational education programs for the following special groups: (a) Persons who had been homemakers but who now, because of dissolution of marriage, must seek employment; (b) Persons who are single heads of households and who lack adequate job skills;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) Persons who are currently homemakers and part-time workers but who wish to secure a full-time job; and (d) Women who now in jobs which have been traditionally considered jobs for females and who wish to seek employment in job areas which have not been traditionally considered as job areas for females, and men who are now in jobs which have been traditionally considered jobs for males and who wish to seek employment in job areas which have not been traditionally considered as job areas for males. (Secs. 107(b)(4)(B), 120(b)(1)(L); 20 U.S.C. 2307, 2330.)	20 USC 2307 Sec. 107(b) (4)(B) p. 54
		Sec. 104.622	Scope of programs. The State shall fund programs, in accordance with the policies and procedures described in its approved five-year State plan pursuant to Sec. 104.187(b), to assess and meet the needs of the groups described in Sec. 104.621. These programs shall include: (a) Organized educational programs necessary to prepare these special groups for employment, including the acquisition, maintenance and repair of instructional equipment; (b) Special courses preparing these individuals in how to seek employment; and (c) Provision of placement service for the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			graduate of these programs. (Implements Sec. 120(b)(1)(L); 20 U.S.C. 2330.)	
			CONSTRUCTION AND OPERATION OF RESIDENTIAL VOCATIONAL SCHOOLS	
		Sec. 104.631	Use of funds. A State may use funds under its basic grant (section 120 of the Act) when included in its five-year State plan and annual program plan for the construction, equipment, and operation of residential vocational schools, including room, board, and other necessities. (Sec. 120(b)(1)(M); 20 U.S.C. 2330.)	
		Sec. 104.634	Construction requirements. When Federal funds are used to pay part of the cost of constructing a residential vocational school, the facility must meet the requirements of Sec. 104.553. (Sec. 120(b)(1)(M); 20 U.S.C. 2330; 45 CFR 100b.157 through 100b.192.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"WORK STUDY PROGRAMS	Sec. 104.523	Requirements of work-study programs.	
20 USC 2331.	"Sec. 121.(a) Funds available to the States under section 120 may be used for grants to local educational agencies for work-study programs which-- "(1) are administered by the local educational agencies and are made reasonably available (to the extent of available funds) to all youths in the area served by such agency who are able to meet the requirements of paragraph (2); "(2) provide that employment under such work-study programs shall be furnished only to a student who (A) has been accepted for enrollment as a full-time student in a vocational education program which meets the standards prescribed by the State board and the local educational agency for vocational education programs assisted under this Act, or in the case of a student already enrolled in such a program, is in good standing and in full-time attendance, (B) is in need of the earnings from such employment to commence or continue his vocational education program, and (C) is at least fifteen years of age and less than twenty-one years of age at the commencement of his employment, and is capable, in the opinion of the appropriate school authorities, of		(a) Work-study programs shall be administered by the local educational agency and shall be made reasonably available (to the extent of available funds) to all youths in the area served by the agency who are able to meet the requirements of paragraph (b) of this section. (b) Work-study programs shall be furnished only to a student who: (1) Has been accepted for enrollment as a full-time student in a vocational education program which meets the standards prescribed by the State board and the local educational agency for vocational education programs assisted under this Act, or in the case of a student already enrolled in such a program, is in good standing and in full-time attendance; (2) Is in need of the earnings from such employment to commence or continue the student's vocational education program; and (3) Is at least 15 years of age and less than 21 years of age at the commencement of the student's employment, and is capable, in the opinion of the appropriate school authorities, of maintaining good standing in his or her vocational education program while employed under the work-study program. (Sec. 121; 20 U.S.C. 2331.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	maintaining good standing in his vocational education program while employed under the work-study program; "(3) provide that, pursuant to regulations of the Commissioner, no student shall be employed under such work-study program for more than a reasonable number of hours in any week in which classes in which he is enrolled are in session, or for compensation which exceeds payments under comparable Federal programs, unless the student is attending a school that is not within a reasonable commuting distance from his home, when the compensation may be set by the Commissioner at a higher level; "(4) provide that employment under such work-study program shall be for the local educational agency or for some other public or nonprofit private agency or institution; and "(5) provide that, in each fiscal year during which such program remains in effect, such agency shall expend (from sources other than payments from Federal funds under this section) for the employment of its students (whether or not in employment eligible for assistance under this section) an amount that is not less than its average annual expenditure for work-study programs of a similar character during the		(c) No student shall be employed under a work-study program for more than 20 hours in any week in which classes in which the student is enrolled are in session. (Implements Sec. 121(a)(3); 20 U.S.C. 2331.) (d) No student employed under a work-study program shall be compensated at a rate which exceeds the hourly rate prevailing in the area for persons performing similar duties. (e) Employment under these work-study programs shall be for the local educational agency or for some other public or nonprofit private agency or institution. Students employed in work-study programs assisted under the authority of this section shall not by reason of this employment be deemed employees of the United States, or their service Federal service, for any reason. (f) In each fiscal year during which the work-study program remains in effect, the local educational agency shall expend (from sources other than payments from Federal funds under this section) for the employment of its students (whether or not the employment is an area eligible for assistance under this section) an amount that is not less than its average annual expenditure for work-study programs of a similar character during the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	three fiscal years preceding the fiscal year in which its work-study program under this section is approved. "(b) Each State in operating work-study programs from funds made available under section 120 shall-- "(1) adopt policies and procedures which assure that Federal funds used for this purpose will be expended solely for the payment or compensation of students employed pursuant to the work-study programs meeting the requirements of subsection (a); and "(2) set forth principles for determining the priority to be accorded applications from local educational agencies for work-study programs, which principles shall give preference to applications submitted by local educational agencies serving communities having substantial numbers of youths who have dropped out of school or who are unemployed, and provide for undertaking such programs, insofar as financial resources available therefor make possible, in the order determined by the application of such principles. "(c) Students employed in work-study programs assisted pursuant to this section shall not by reason of such employment be deemed employees of the United States, or their service Federal service, for any reason.		three fiscal years preceding the fiscal year in which its work-study program is approved. (Sec. 121; 20 U.S.C. 2330, 2331.)	20 USC 2330. p. 102

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"COOPERATIVE VOCATIONAL EDUCATION PROGRAMS		COOPERATIVE VOCATIONAL EDUCATION PROGRAMS.	
20 USC 2332.	"Sec. 122. Funds available to the States under section 120 may be used for establishing or expanding cooperative vocational education programs through local educational agencies with the participation of public and private employers. Such programs shall include provisions assuring that-- "(a) funds will be used only for developing and operating cooperative vocational programs as defined in section 195(18) which provide training opportunities that may not otherwise be available and which are designed to serve persons who can benefit from such programs; "(b) necessary procedures are established for cooperation with employment agencies, labor groups, employers, and other community agencies in identifying suitable jobs for persons who enroll in cooperative vocational education programs; "(c) provision is made, where necessary, for reimbursement of added costs to employers for on-the-job training of students enrolled in cooperative programs, provided such on-the-job training is related to existing career opportunities susceptible of promotion and advancement and which do not displace other workers who perform such work;	Sec. 104.531	Use of funds. (a) A State may use funds under its basic grant (section 120 of the Act) for grants to local educational agencies for establishing or expanding cooperative vocational education programs with the participation of public and private employers, when these programs are generally described in the approved five-year State plan and the annual program plan. (b) The State, in its review of local applications, shall give priority for funding cooperative vocational education programs to local educational agencies in areas that have high rates of school dropouts or youth unemployment. (Sec. 122(a), (e); 20 U.S.C. 2332.)	
		Sec. 104.532	Assurances in five-year State plan. A State conducting cooperative vocational education programs under Sec. 104.531 shall provide assurances in the approved five-year State plan that: (a) Funds will be used only for developing and operating cooperative vocational education programs as defined in Appendix A and which provide training opportunities that may not otherwise be available and which are designed to serve persons who can	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(d) ancillary services and activities to assure quality in cooperative vocational education programs are provided for, such as pre-service and in-service training for teacher coordinators, supervision, curriculum materials, travel of students and coordinators necessary to the success of such programs, and evaluation; "(e) priority for funding cooperative vocational education programs through local educational agencies is given to areas that have high rates of school dropouts and youth unemployment; "(f) to the extent consistent with the number of students enrolled in nonprofit private schools in the area to be served, whose educational needs are of the type which the program or project involved is to meet, provision has been made for the participation of such students; "(g) Federal funds made available under this section to accommodate students in nonprofit private schools will not be commingled with State or local funds; and "(h) such accounting evaluation, and followup procedures as the Commissioner deems necessary will be provided.		benefit from these programs; (b) Necessary procedures are established for cooperation with employment agencies, labor groups, employers, and other community agencies in identifying suitable jobs for persons who enroll in cooperative vocational education programs; (c) Provision is made, where necessary, for reimbursement of added costs to employers for on-the-job training of students enrolled in cooperative programs, provided that the on-the-job training is related to existing career opportunities susceptible of promotion and advancement and which do not displace other workers who perform the work; (Sec. 122; 20 U.S.C. 2332.) (d) The program provides cooperative on-the-job training that (1) employs and compensates student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of the student-learner for private gain, and (2) is conducted in accordance with written training agreements between local educational agencies and employers; (Implements Sec. 122(c); 20 U.S.C. 2332.) (e) Procedures are developed and published for use by local educational agencies for providing ancillary services	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			and activities to assure that quality in cooperative vocational education programs is provided for and may include pre-service and in-service training for teacher coordinators, supervision, curriculum materials, travel for students and coordinators necessary to the success of such programs, and evaluation; and (f) Policies and procedures will be adopted for accounting, for continuous evaluation of cooperative vocational education programs, and for follow-up of students who have completed or left these programs. (Sec. 122; 20 U.S.C. 2332.)	
		Sec. 104.533	Students in nonprofit private schools. (a) A State using funds under its basic grant (Section 120 of the Act) for grants to local educational agencies for cooperative vocational education programs shall consult with the appropriate nonprofit private schools. (b) Each local educational agency receiving funds from the State for cooperative vocational education programs shall: (1) Identify the students enrolled in nonprofit private schools in the area served by the local educational agency whose educational needs are of the type which the cooperative vocational education programs and services may benefit; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(2) Assess adequately the needs of the students identified in subparagraph (1) of this paragraph for the cooperative vocational education programs and services being offered; and (3) Provide the students identified in subparagraph (1) of this paragraph with the opportunity for cooperative vocational education programs and services in a manner which will most effectively meet the needs of these students. (c) The personnel, materials and equipment necessary to provide cooperative vocational education programs and services to nonprofit private school students shall remain under the administration, direction and control of the local educational agency. (d) Cooperative vocational education programs carried out by local educational agencies which include students enrolled in nonprofit private schools may be supported up to 100 percent with Federal funds. (e) Federal funds used to support cooperative vocational education programs which include students enrolled in nonprofit private schools will not be commingled with State or local funds so as to lose their identity. In developing policies and procedures, it shall not be necessary to require separate bank accounts for funds from	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			Federal sources, so long as accounting methods will be established which assure that expenditures of the funds can be separately identified. (Implements Sec. 122(f); H. Rept. 1085, p. 46; 20 U.S.C. 2332.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"ENERGY EDUCATION		ENERGY EDUCATION	
20 USC 2333.	"Sec. 123. (a)(1) Funds available to States under section 120 may be used to make grants to postsecondary educational institutions to carry out programs for the training of miners, supervisors, technicians (particularly safety personnel), and environmentalists in the field of coal mining and coal mining technology, including acquisition of equipment necessary for the conduct of such program. "(2) Grants made under this section shall be made pursuant to applications which describe with particularity a program for the training of miners, supervisors, and technicians in the field of coal mining and coal mining technology, including provision for supplementary demonstration projects or short-term seminars, which program may include such curriculums as (A) the extraction, preparation, and transportation of coal, (B) the reclamation of coal mined land, (C) the strengthening of health and safety programs for coal mine employees, (D) the disposal of coal mine wastes, and (E) the chemical and physical analysis of coal and materials, such as water and soil, that are involved in the coal mining process. "(b) Funds available under section 120 may also	Sec. 104.541 Sec. 104.542	Use of funds. A State may use funds under its basic grant (section 120 of the Act), when included in the approved five-year State plan and annual program plan, for grants to postsecondary institutions for energy education. (Sec. 123; 20 U.S.C. 2333.) Applications by postsecondary educational institutions. (a) A State shall make a grant to a postsecondary educational institution only on application by the postsecondary educational institution to the State. (b) The application shall describe with particularity a program for the training of miners, supervisors, and technicians (particularly safety personnel), and environmentalists in the field of coal mining and coal mining technology, including provision for supplementary demonstration projects or short-term seminars, which program may include curriculums such as: (1) Extraction, preparation, and transportation of coals; (2) Reclamation of coal mined land; (3) Strengthening of health and safety programs for coal mine employees;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	be used to make grants to postsecondary educational institutions to carry out programs for the training of individuals needed for the installation of solar energy equipment, including training necessary for the installation of glass paneled solar collectors and of wind energy generators, and for the installation of other related applications of solar energy.		(4) Disposal of coal mine wastes; and (5) Chemical and physical analysis of coal and materials, such as water and soil, that are involved in the coal mining process. (c) Postsecondary educational institutions may use funds for the acquisition of equipment necessary for the conduct of these programs. (Sec. 123(a)(1)(2)(A) through (E); 20 U.S.C. 2333.)	
		Sec. 104.543	Solar energy. A State may also use funds under its basic grant (section 120 of the Act) to make grants to postsecondary educationa programs for: (a) Training of individuals needed for the installation of solar energy equipment; and (b) Training necessary for the installation of: (1) Glass paneled solar collectors; (2) Wind energy generators; and (3) Other related applications of solar energy. (Sec. 123(b); 20 U.S.C. 2333.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
20 USC 2334.	"RESIDENTIAL VOCATIONAL SCHOOLS "Sec. 124. (a) Funds available to the States under section 120 may be used for the construction, equipment, and operation of residential schools to provide vocational education (including room, board, and other necessities) for youths, at least fifteen years of age and less than twenty-one years of age at the time of enrollment, who need full-time study on a residential basis in order to benefit fully from such education. In using funds available under section 120 for this purpose, the States shall give special consideration to the needs of large urban areas and isolated rural areas having substantial numbers of youths who have dropped out of school or who are unemployed.	Sec. 104.632	Residential vocational schools. A residential vocational school is an institution which provides vocational education for youths (males and females) who are at least 15 years of age and less than 21 years of age at the time of enrollment, and who need full-time study on a residential basis in order to benefit fully from the education. For the purposes of this section, institutions to which juveniles are assigned as a result of their delinquent conduct are not residential vocational schools. (This does not prohibit States from using funds under section 120 of the Act for the provision of vocational education programs in correctional institutions.) (Sec. 124; 20 U.S.C. 2334.)	
	"(b) No funds made available under section 120 may be used for the purposes of this section for residential vocational schools to which juveniles are assigned as the result of their delinquent conduct or in which the students are segregated because of race.	Sec. 104.633	Special considerations for residential vocational schools. (a) States shall give special consideration to the needs of large urban areas and isolated rural areas having substantial numbers of youths who have dropped out of school or who are unemployed. (b) Funds may not be used for schools in which students are segregated because of race. (Sec. 124(b); 20 U.S.C. 2334.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"SUBPART 3--PROGRAM IMPROVEMENT AND SUPPORTIVE SERVICES "AUTHORIZATION OF GRANTS AND USES OF FUNDS		SUBPART 3-- PROGRAM IMPROVEMENT AND SUPPORTIVE SERVICES	
20 USC 2350	"Sec. 130.(a) From the sums made available for grants under this subpart pursuant to section 103 the Commissioner is authorized to make grants to States to assist them in improving their vocational education programs and in providing supportive services for such programs in accordance with the provisions of this subpart. "(b) Grants to States under this subpart may be used, in accordance with five-year State plans, and annual program plans approved pursuant to section 109, for the following purposes: "(1) research programs as described in section 131; "(2) exemplary and innovative programs as described in section 132; "(3) curriculum development programs as described in section 133; "(4) provision of guidance and counseling services, programs, and activities as described in section 134;	Sec. 104.701	Authorization of grants. A State shall use 20 percent of the funds allotted pursuant to section 102(a) of the Act for any of the following purposes, except as provided in Sec. 104.762(a); (a) Program improvement described in Sec. 104.702; (b) Vocational guidance and counseling described in Sec. 104.761; (c) Vocational education personnel training described in Sec. 104.771; (d) Grants to overcome sex bias and sex stereotyping described in Sec. 104.791; (e) State administration of the five-year State plan and annual program plan described in Sec. 104.306; and (f) Local supervision and administration of vocational education programs, services, and activities described in Sec. 104.307. (Secs. 103(e), 130; 20 U.S.C. 2303, 2350.)	20 USC 2303 Sec. 103(e) p. 12
	"(5) provision of pre-service and in-service training as described in section 135; "(6) grants to overcome sex bias as described in section 136; and "(7) subject to the provisions of section	Sec. 104.702	PROGRAM IMPROVEMENT Purpose. The purpose of program improvement is to improve vocational education by the support of research programs, exemplary and innovative programs, and curriculum development programs.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	111, the costs of supervision and administration of vocational education programs by eligible, recipients, and State administration of the five-year plan submitted pursuant to section 107 and of the annual program plan submitted pursuant to section 108, except that not more than 20 per centum of the amount of payments determined under section 111 for such purposes shall be made from grants under this subpart."		(Sec. 130; 20 U.S.C. 2350.)	
		Sec. 104.703	Research coordinating unit. (a) In order to expend funds for program improvement, the State shall establish a research coordinating unit to coordinate the research, exemplary and innovative programs, and curriculum development activities in the State. (b) The State shall set forth the organizational structure of this research coordinating unit in the five-year State plan. (c) The State shall develop a comprehensive plan of program improvement which includes: (1) The intended uses of funds available under section 130 of the Act to support activities of program improvement; (2) A description of the State's priorities for program improvement; and (3) The procedures to be used by the research coordinating unit to insure that the findings and results of the program improvement activities in the State are disseminated throughout the State in a coordinated fashion. (d) The State shall include the comprehensive plan of program improvement in the five-year State plan and annual program plan. (3) The research coordinating unit shall submit	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			to the Commissioner and to the National Center for Research in Vocational Education the following: (1) Two copies of an abstract of each approved project for program improvement, within 30 calendar days after approval of the project, containing the source and amount of funds obligated for the project; and (2) Two copies of the final report resulting from the State project, within three months after the ending date of the project. (f) The research coordinating unit may use funds available under section 130 of the Act for the purposes set forth in Secs. 104.705, 104.706, and 104.708. This unit may contract for the performance of activities described in Secs. 104.705, 104.706, and 104.708, or this unit may perform the activities set forth in Sec. 104.705, using its own staff. The cost of the professional and support staff of the research coordinating unit is supportable with Federal funds available under section 130 of the Act. (Implements Secs. 130, 131, 132, 133, 171; 20 U.S.C. 2350 through 2353, 2401; H.R. Rept. 94-1085, p. 44; H.R. Rept. 94-1701, pp. 225-226.)	20 USC 2350 through 2353, 2401; Sec. 130, 131, 132, 133, 171 pp. 135-143, 177
20 USC 2351	"RESEARCH "Sec. 131. (a) Funds	Sec. 104.704	Contract requirements. No contract shall be made pursuant to Secs.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	available to the States under section 130(a) may be used for support of State research coordinating units and for contracts by those units pursuant to comprehensive plans of program improvement involving-- "(1) applied research and development in vocational education; "(2) experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings, including programs and projects to overcome problems of sex bias and sex stereotyping; "(3) improved curriculum materials for presently funded programs in vocational education and new curriculum materials for new and emerging job fields, including a review and revision of any curricula developed under this section to insure that such curricula do not reflect stereotypes based on sex, race, or national origin; (4) projects in the development of new careers and occupations, such as-- "(A) research and experimental projects designed to identify new careers in such fields as mental and physical health, crime prevention and correction, welfare, education, municipal services, child care, and recreation, requiring less training than professional positions, and to delineate within such		104.705, and 104.708 unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contracts. (Sec. 131(b), 133(b); 20 U.S.C. 2351, 2353.)	20 USC 2353 Sec. 133(b) p. 143
		Sec. 104.705	Use of funds for research programs. A research coordinating unit may use funds available under section 130 of the Act directly or by contract for: (a) Applied research and development in vocational education; (b) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings, including programs and projects to overcome problems of sex bias and sex stereotyping; (c) Improved curriculum materials for new and emerging job fields, including a review and revision of any curricula developed under this section to insure that such curricula do not reflect stereotypes based on sex, race, or national origin; (d) Projects in the development of new careers and occupations, such as:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	career roles with the potential for advancement from one level to another; "(B) training and development projects designed to demonstrate improved methods of securing the involvement, cooperation, and commitment of both the public and private sectors toward the end of achieving greater coordination and more effective implementation of programs for the employment of persons in the fields described in subparagraph (A), including programs to prepare professionals (including administrators) to work effectively with aides; and "(C) projects to evaluate the operation of programs for the training, development, and utilization of public service aides, particularly their effectiveness in providing satisfactory work experiences and in meeting public needs; and "(5) dissemination of the results of the contracts made pursuant to paragraphs (1) through (4), including employment of persons to act as disseminators, on a local level, of these results. "(b) No contract shall be made pursuant to subsection (a) unless the applicant can demonstrate a reasonable probability that the contract will result in improved		(1) Research and experimental projects designed to identify new careers in such fields as mental and physical health, crime prevention and correction, welfare, education, municipal services, child care, and recreation, requiring less training than professional positions and to delineate within such career roles with the potential for advancement from one level to another; (2) Training and development projects designed to demonstrate improved methods of securing the involvement, cooperation, and commitment of both the public and private sectors toward the end of achieving greater coordination and more effective implementation of programs for the employment of persons in the fields described in subparagraph (1) including programs to prepare professionals (including administrators) to work effectively with aides; and (3) Projects to evaluate the operation of programs for the training, development, and utilization of public service aides particularly their effectiveness in providing satisfactory work experiences and in meeting public needs; and (e) Dissemination of the results of the contracts made pursuant to	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contract.		paragraphs (a) through (d), as well as the results of other research projects, including employment of persons to act as disseminators on a local level, of these results. (Sec 131(a); 20 U.S.C. 2351.)	
	"EXEMPLARY AND INNOVATIVE PROGRAMS	Sec. 104.706	Use of funds for exemplary and innovative programs.	
20 USC 2352	"Sec. 132.(a) Funds available to the States under section 130(a) may be used for contracts by State research coordinating units pursuant to comprehensive plans of program improvement for the support of exemplary and innovative programs, including--". "(1) programs designed to develop high quality vocational education programs for urban centers with high concentrations of economically disadvantaged individuals, unskilled workers, and unemployed individuals; "(2) programs designed to develop training opportunities for persons in sparsely populated rural areas and for individuals migrating from farms to urban areas; "(3) programs of effective vocational education for individuals with limited English-speaking ability; "(4) establishment of cooperative arrangements between public education and manpower agencies, designed to correlate vocational education opportunities with current and projected needs of		(a) The research coordinating unit may use funds available under section 130 of the Act directly or by contract for: (1) Programs to develop high quality vocational education programs for urban centers with high concentrations of: (i) Economically disadvantaged individuals; (ii) Unskilled workers; and (iii)Unemployed individuals. (2) Programs to develop training opportunities for: (i) Persons in sparsely populated rural areas; and (ii) Individuals migrating from farms to urban areas. (3) Programs of effective vocational education for persons of limited English-speaking ability; (4) Establishment of cooperative arrangements between public education and manpower agencies, designed to correlate vocational education opportunities with current and projected needs of the labor market; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	the labor market; and "(5) programs designed to broaden occupational aspirations and opportunities for youth, with special emphasis given to youth who have academic, socioeconomic, or other handicaps, including-- "(A) programs and projects designed to familiarize elementary and secondary school students with the broad range of occupations for which special skills are required, and the requisites for careers in such occupations; and "(B) programs and projects to facilitate the participation of employers and labor organizations in postsecondary vocational education. "(b) Every contract, made by a State for the purpose of funding exemplary and innovative projects shall give priority to programs and projects designed to reduce sex stereotyping in vocational education and shall, to the extent consistent with the number of students enrolled in nonprofit private schools in the area to be served whose educational needs are of the type which the program or project involved is to meet, provide for the participation of such students; and such contract shall also provide that the Federal funds made available under this section to accommodate students in nonprofit priate schools will not be		(5) Programs designed to broaden occupational aspirations and opportunities for youth, especially for youth who have academic, socioeconomic, or other handicaps. These programs include: (i) Programs and project to familiarize elementary and secondary students with the broad range of occupations for which special skills are required and the requisites for careers in those occupations; and (ii) Programs and projects to facilitate the participation of employers and labor organizations in postsecondary vocational education. (6) Dissemination of the results of these contracts made under the authority of paragraphs (a) through (e), including employment of persons to act as disseminators, on a local level, of these results. (Sec. 132(a); 20 U.S.C. 2352.) (b) Every contract made by a research coordinating unit for the purpose of funding exemplary and innovative projects shall: (1) Give priority to programs and projects designed to reduce sex bias and sex stereotyping in vocational education; (2) To the extent consistent with the number of students enrolled in private nonprofit schools	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	commingled with State or local funds. "(c) The annual program plan and accountability report covering the final year of financial support by the State for any such program or project shall indicate the proposed disposition of the program or project following the cessation of Federal support and the means by which successful or promising programs or projects will be continued and expanded within the State.		in the area to be served, whose educational needs are of the type which the program is designed to meet, make provision (in accordance with the requirements set forth in Sec. 104.533) for the participation of these students in the programs, and also (3) Provide that the Federal funds made available for exemplary and innovative programs to accommodate students in nonprofit private schools will not be commingled with State or local funds. (Sec. 132(b); 20 U.S.C. 2352.)	
		Sec. 104.707	Disposition of exemplary and innovative programs. The State shall indicate in the annual program plan and accountability report covering the final year of financial support by the State for any exemplary and innovative program: (a) The proposed disposition of the program when Federal support ends; and (b) The means by which successful or promising programs will be continued and expanded within the State. (Sec. 132(c); 20 U.S.C. 2352.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"CURRICULUM DEVELOPMENT			
20 USC 2353	"Sec. 133. (a) Funds available to the States under section 130(a) may be used for contracts by State research coordinating units pursuant to comprehensive plans of program improvement for the support of curriculum development projects, including--: "(1) The development and dissemination of vocational education curriculum materials for new and changing occupational fields and for individuals with special needs, as described in section 110; and "(2) the development of curriculum and guidance and testing materials designed to overcome sex bias in vocational education programs, and support services designed to enable teachers to meet the needs of individuals enrolled in vocational education programs traditionally limited to members of the opposite sex, "(b) No contract shall be made pursuant to subsection (a) unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contract.	Sec. 104.708	Use of funds for curriculum development programs. The research coordinating unit may use funds available under section 130 of the Act directly or by contract for: (a) Development and dissemination of vocational education curriculum materials for new and changing occupational fields; (b) Development and dissemination of vocational education curriculum materials for: (1) Handicapped persons; (2) Disadvantaged persons (other than handicapped persons); (3) Persons of limited English-speaking ability; (c) Development and dissemination of curriculum and guidance and testing materials designed to overcome sex bias and sex stereotyping in vocational educational programs; (d) Support services designed to enable teachers to meet the needs of individuals enrolled in vocational education programs traditionally limited to members of the opposite sex; and (e) Development and dissemination of other curriculum materials designed to improve the State's vocational education programs. (Sec. 133(a); 20 U.S.C. 2353.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"VOCATIONAL GUIDANCE AND COUNSELING		VOCATIONAL GUIDANCE AND COUNSELING	
20 USC 2354	"Sec. 134. (a) Not less than 20 per centum of the funds available to the States under section 130(a) shall be used to support programs for vocational development guidance and counseling programs and services which, subject to the provisions of subsection (b), shall include one or more of the following activities--	Sec. 104.761	Purpose. The purpose of vocational guidance and counseling assistance is to improve the State's vocational education programs by providing support for vocational development guidance and counseling programs, services, and activities. (Secs. 130(b)(4), 134(a); 20 U.S.C. 2350, 2354.)	20 USC 2350 Sec. 130(b)(4) p. 135
	"(1) initiation, implementation, and improvement of high quality vocational guidance and counseling programs and activities; "(2) vocational counseling for children, youth, and adults, leading to a greater understanding of educational and vocational options; "(3) provision of educational and job placement services, including programs to prepare individuals for professional occupations or occupations requiring a baccalaureate or higher degree, including followup services;	Sec. 104.762	Conformity with five-year State plan. (a) A State shall use not less than 20 percent of the Federal funds available under section 130 of the Act to support vocational development guidance and counseling programs, services, and activities. (b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan. (Sec. 134; 20 U.S.C. 2354; Sen. Rept. 94-882, p. 80.)	
	"(4) vocational guidance and counseling training designed to acquaint guidance counselors with (A) the changing work patterns of women, (B) ways of effectively overcoming occupational sex stereotyping, and (C) ways of assisting girls and women in selecting careers solely on their occupational	Sec. 104.763	Kinds of programs, services, and activities. Funds made available to a State under the vocational guidance and counseling program (section 134 of the Act) shall be used to support one or more of the following activities; Guidance and counseling. (a) Initiation, implementation, and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	needs and interests, and to develop improved career counseling material which are free; "(5) vocational and educational counseling for youth offenders and adults in correctional institutions; "(6) vocational guidance and counseling for persons of limited English-speaking ability; "(7) establishment of vocational resource centers to meet the special needs of out-of-school individuals, including individuals seeking second careers, individuals entering the job market late in life, handicapped individuals, individuals from economically depressed communities or areas, and early retirees; and "(8) leadership for vocational guidance and exploration programs at the local level. "(b) Each State which chooses to fund activities described in paragraph (1) or (2) of subsection (a) of this section shall use those funds, insofar as is practicable, for funding programs, services, or activities by eligible recipients which bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students, and which bring students into the work establishments of business and industry,		improvement of high quality vocational guidance and counseling programs and activities; (b) Vocational counseling for children, youth, and adults, leading to a greater understanding of educational and vocational options; (c) Provision of educational and job placement programs and follow-up services for students in vocational education and for individuals preparing for professional occupations or occupations requiring a baccalaureate or higher degree. Follow-up services provided to baccalaureate or higher degree students shall be only for students enrolled on or after October 1, 1977; (d) Vocational guidance and counseling training designed to acquaint guidance counselors with (1) the changing work patterns of women, (2) ways of effectively overcoming occupational sex stereotyping, and (3) ways of assisting girls and women in selecting careers solely on their occupational needs and interests, and to develop improved career counseling materials which are free; (e) Vocational and educational counseling for youth offenders and adults in correctional institutions; (f) Vocational guidance and counseling for persons of limited	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	the professions, and other occupational pursuits for the purpose of acquainting students with the nature of the work that is accomplished therein, and for funding projects of such recipients in which guidance counselors obtain experience in business and industry, the professions, and other occupational pursuits which will better enable those counselors to carry out their guidance and counseling duties.		English-speaking ability; (g) Establishment of vocational resource centers to meet the special needs of out-of-school individuals, including individuals seeking second careers, individuals entering the job market late in life, handicapped individuals, individuals from economically depressed communities or areas, and early retirees; and (h) Leadership for vocational guidance and exploration programs at the local level. (Implements Sec. 134(a); 20 U.S.C. 2354; Sen. Rept. No. 95-142.)	
		Sec. 104.764	Special emphasis. Recipients of funds allocated by the State for programs, services, and activities listed in Sec. 104.763 (a) or (b) shall use those funds, insofar as is practicable; (a) To bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students; (b) To bring students into the work establishments of business and industry, the professions, and other occupations to acquaint students with the nature of work accomplished therein; and (Sec. 134(b); 20 U.S.C. 2354.) (c) To enable guidance counselors to obtain experience in business	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			and industry, the professions, and other occupational pursuits which will better enable those counselors to carry out their guidance and counseling duties. (Sec. 134(b); 20 U.S.C. 2354; Conf. Rept. No. 94-1701, p. 225.)	
	"VOCATIONAL EDUCATION PERSONNEL TRAINING		VOCATIONAL EDUCATION PERSONNEL TRAINING	
20 USC 2355	"Sec. 135. (a) Funds available to the States under section 130(a) may be used to support programs or projects designed to improve the qualifications of persons serving or preparing to serve in vocational education programs, including teachers, administrators, supervisors, and vocational guidance and counseling personnel, including programs or projects--	Sec. 104.771	Purpose. The purpose of vocational education personnel training is to improve the State's vocational education programs and the services which support those programs by improving the qualifications of persons serving or preparing to serve in vocational education programs. (Sec. 135(a); 20 U.S.C. 2355.)	
	"(1) to train or retrain teachers, and supervisors and trainers of teachers, in vocational education in new and emerging occupations; "(2) which provide inservice training for vocational education teachers and other staff members, to improve the quality of instruction, supervision, and administration of vocational education programs, and to overcome sex bias in vocational education programs; "(3) which provide for exchange of vocational education teachers and other personnel with	Sec. 104.772	Conformity with five-year State plan. (a) The State may use funds available under section 130 of the Act to support vocational education personnel training programs. (Sec. 135(a); 20 U.S.C. 2355.) (b) In order to be eligible for support under section 130 of the Act, specific programs and projects of training must be in accord with the general plan for vocational education personnel training as set forth in the approved five-year State plan and annual program plan for	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	skilled workers or supervisors in business, industry, and agriculture (including mutual arrangements for preserving employment and retirement status and other employment benefits during the period of exchange), and the development and operation of cooperative programs involving periods of teaching in schools providing vocational education and of experience in commercial, industrial, or other public or private employment related to the subject matter taught in such school; "(4) to prepare journeymen in the skilled trades or occupations for teaching positions; "(5) to train and to provide in-service training for teachers and supervisors and trainers of teachers in vocational education to improve the quality of instruction, supervision, and administration of vocational education for persons with limited English-speaking ability and to train or retrain counseling and guidance personnel to meet the special needs of persons with limited English-speaking ability; and "(6) which provide short-term or regular-session institutes designed to improve the qualifications of persons entering or reentering the field of vocational education in new and emerging occupational		vocational education. (Sec. 130(b); 20 U.S.C. 2350.)	20 USC 2350 Sec. 130(b) p. 135
		Sec. 104.773	Eligible participants. Training may be provided to persons serving or preparing to serve in vocational education programs, including teachers, administrators, supervisors, and vocational guidance and counseling personnel. (Sec. 135(a); 20 U.S.C. 2355.)	
		Sec. 104.774	Types of training. Funds available to the State under section 130 of the Act may be used in support programs and projects designed to improve the qualifications of persons who are eligible under Sec. 104.773, including (but not limited to) the following: (a) Training or retraining for teachers, and supervisors and trainers of teachers, in vocational education in new and emerging occupations; (b) In-service training for vocational education teachers and other staff members, to improve the quality of instruction, supervision, and administration of vocational education programs, and to overcome sex bias and sex stereotyping in vocational education programs; (c) Provisions for exchange of vocational education teachers and other personnel with skilled workers or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	areas in which there is a need for such personnel. "(b) A State may include in the terms of any grant or contract under this section provisions authorizing the payment, to persons participating in the training programs supported under this section, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as the Commissioner may determine, pursuant to regulations, consistent with prevailing practices under comparable programs.		supervisors in business, industry, and agriculture (including mutual arrangements for preserving employment and retirement status and other employment benefits during the period of exchange), and the development and operation of cooperative programs involving periods of teaching in schools providing vocational education and of experience in commercial, industrial, or other public or private employment related to the subject matter taught in such schools; (d) Training to prepare journeymen in the skilled trades or occupations for teaching positions; (e) Training, including in-service training, for teachers and supervisors and trainers of teachers in vocational education to improve the quality of instruction, supervision and administration of vocational education for persons who are disadvantaged, or handicapped, or who are of limited English-speaking ability, and to train or retrain counseling and guidance personnel to meet the special needs of these persons; (f) Provision of short-term or regular-session institutes designed to improve the qualifications of persons entering or reentering the field of vocational education in new and emerging occupational areas in which there is a need for	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			such personnel. (Sec. 135(a); 20 U.S.C. 2355.)	
		Sec. 104.775	Grants or contracts. The State board may make grants or contracts, in accordance with its five-year State plan and annual program plan, in support of both training and retraining programs and projects to provide: (a) Both pre-service and in-service education; and (b) Both regular-session (academic year) institutes and short-term institutes. (Sec. 135(a)(6), (b); 20 U.S.C. 2355.)	
		Sec. 104.776	Stipends to trainees. Within the limits set in paragraphs (c) through through (f) of this section, the State board may, at its discretion, authorize payment of: (a) Stipends to participating trainees in programs or projects supported under section 135 of the Act; and (b) Allowances for other expenses for such trainees and their dependents. (Sec. 135(b); 20 U.S.C. 2355.) (c) Part-time and short-term training. For part-time training and for short-term training (for periods not in excess of the equivalent of ten working days), the upper limits of stipends per participant are: (1) Per hour of actual training, a sum not in	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			excess of the average amount earned per hour of teaching by full-time classroom teachers in the State; (2) Per full day of training, a sum not in excess of six times the rate per hour set in paragraph (c)(1) of this section; and (3) Per five-day week of training, a sum not in excess of five times the rate per day set in paragraph (c)(2) of this section. (d) Full-time academic year or summer session. The upper limits for stipends per participant for full-time training are: (1) Per academic year of approximately nine months, a sum not in excess of $4500; and (2) Per summer session of at least six weeks, a sum not in excess of $900. (e) Other periods of full-time training. For full-time training for periods of more than the equivalent of ten full days and less than six weeks, the stipend is limited to a sum calculated at a rate proportionate to $500 per calendar month. (f) Other allowances. In addition to the sum allowable under authority of paragraphs (c), (d), and (e) of this section, the State may make payments only as follows: (1) For the cost of participant travel to and from training sites, a participant is allowed	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the same per-mile rate for automobile travel as an employee of the State educational agency; (2) For support of dependents of participants, a sum not in excess of: (i) $675 per dependent for each academic year of full-time training; and (ii) $170 per dependent for full-time training during a summer session of at least six weeks. (Implements Sec. 135(b); 20 U.S.C. 2355.)	
	GRANTS TO ASSIST IN OVERCOMING SEX BIAS		GRANTS TO OVERCOME SEX BIAS AND SEX STEREOTYPING	
20 USC 2356	"Sec. 136. Funds available to the States under section 130(a) may be used to support activities which show promise of overcoming sex stereotyping and bias in vocational education.	Sec. 104.791	Purpose. The purpose of grants under Sec. 104.792 is to support activities which show promise of overcoming sex bias and sex stereotyping in vocational education. (Secs. 130(b)(6), 136; 20 U.S.C. 2350, 2356.)	20 USC 2350 Sec. 130(b)(6) p. 135
		Sec. 104.792	Conformity with five-year State plan. (a) A State may use funds available under section 130 of the Act to support grants to overcome sex bias and sex stereotyping in vocational education programs. (Sec. 136; 20 U.S.C. 2356.) (b) The expenditure of funds for this purpose shall be in accordance with the approved five-year State plan and annual program plan. The plans shall describe the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			types of projects to be funded. (Sec. 130(b); 20 U.S.C. 2350.)	20 USC 2350 Sec. 130(b) p. 135
		Sec. 104.793	Types of projects. Funds may be used for projects such as: (a) Research projects on ways to overcome sex bias and sex stereotyping in vocational educational programs; (b) Development of curriculum materials free of sex stereotyping: (c) Development of criteria for use in determining whether curriculum materials are free from sex stereotyping. (d) Examination of current curriculum materials to assure that they are free of sex stereotyping; and (e) Training to acquaint guidance counselors, administrators, and teachers with ways of effectively overcoming sex bias and sex stereotyping, especially in assisting persons in selecting careers according to their interests and occupational needs rather than according to stereotypes. (Implements Sec. 136; 20 U.S.C. 2356.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"SUBPART 4--SPECIAL PROGRAMS FOR THE DISADVANTAGED "SPECIAL PROGRAMS FOR THE DISADVANTAGED		SUBPART 4--SPECIAL PROGRAMS FOR THE DISADVANTAGED	
20 USC 2370	"Sec. 140. (a) From the sums made available for grants under this subpart pursuant to sections 102 and 103, the Commissioner is authorized to make grants to States to assist them in conducting special programs for the disadvantaged (as defined in section 195(16)) in accordance with the requirements of this subpart.	Sec. 104.801	Grants to States for special programs for the disadvantaged. A State shall use the funds allocated to it from the separate authorization (section 102(b) of the Act) for special programs for the disadvantaged as defined in Sec. 104.804 and Appendix A of these regulations. (Sec. 140; 20 U.S.C. 2370.)	
	"(b)(1) Grants to States under this subpart shall be used, in accordance with five-year State plans and annual program plans approved pursuant to section 109, for allocation within the State to areas of high concentrations of youth unemployment and school dropouts, and shall be used to pay the full cost of vocational education for disadvantaged persons. "(2) Such funds may be granted to eligible recipients only if (A) to the extent consistent with the number of students enrolled in nonprofit private schools in the area to be served whose educational needs are of the type which the program or project involved is to meet, provision has been made for the participation of such students, and (B)	Sec. 104.802	Use of funds. (a) A State shall use the funds available under section 104.801, in accordance with the approved five-year State plan and annual program plan, for special programs of vocational education for disadvantaged persons in areas of high concentration of youth unemployment or school dropouts. (b) A State shall use the funds under Sec. 104.801 to pay up to 100 percent of the cost of special programs for disadvantaged persons. (c) Funds available under Sec. 104.801 may be used in addition to funds made available to the State for basic grants (section 120 of the Act): Provided, That the funds are used to conduct special programs of vocational education for the disadvantaged to	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	effective policies and procedures have been adopted which assure that Federal funds made available under this subpart to accommodate students in nonprofit private schools will not be commingled with State or local funds.		enable them to succeed in vocational education programs. (Sec. 140; 20 U.S.C. 2370.)	
		Sec. 104.803	Students in nonprofit private schools. A State may grant funds to eligible recipients only if: (a) Provision (in accordance with the requirements set forth in Sec. 104.553) has been made for the participation of students enrolled in nonprofit private schools in the area to be served whose educational needs are of the type which the program or projects involved is to meet, to the extent consistent with the number of such students; and (b) Effective policies and procedures have been adopted which assure that Federal funds made available under this subpart to accommodate students in nonprofit private schools will not be commingled with State or local funds. (Sec. 140(b)(2); 20 U.S.C. 2370.)	
		Sec. 104.804	Criteria of need and eligibility. (a) The term "disadvantaged" means persons (other than handicapped persons) who: (1) Have academic or economic disadvantages; and (2) Require special services, assistance, or programs in order to enable them to succeed	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			in vocational education programs. (Sec. 195(16); 20 U.S.C. 2461.) (b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person: (1) Lacks reading and writing skills; (2) Lacks mathematical skills; or (3) Performs below grade level. (c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means: (1) Family income is at or below national poverty level; (2) Participant or parent(s) or guardian of the participant is unemployed; (3) Participant or parent of participant is recipient of public assistance; or (4) Participant is institutionalized or under State guardianship. (Implements Sec. 140; 20 U.S.C. 2370.) (d) Eligibility for participation in the special programs supported under Sec. 104.801 is limited to persons who (because of academic or economic disadvantage); (1) Do not have at the time of entrance into a vocational education program, the prerequisites for success in the program; or who (2) Are enrolled in a vocational education program but require	20 USC 2461 Sec. 195(16) p. 254

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			supportive services or special programs to enable them to meet the requirements for the programs that are established by the State or the local educational agency. (Implements Sec. 140; 20 U.S.C. 2370.)	
	"SUBPART 5 -- CONSUMER AND HOMEMAKING EDUCATION		Subpart 5 -- Consumer and Homemaking Education	
	"CONSUMER AND HOMEMAKING EDUCATION	Sec. 104.901	Grants to States for consumer and homemaking education.	
20 USC 2380	"Sec. 150.(a, From the sums made available for grants under this subpart pursuant to sections 102 and 103, the Commissioner is authorized to make grants to States to assist them in conducting consumer and homemaking education programs.		A State shall use the funds allotted to it from the separate authorization (section 102(c) of the Act) for programs of consumer and homemaking education. (Sec. 150(a); 20 U.S.C. 2380.)	
	"(b) Grants to States under this subpart may be used, in accordance with five-year State plans and annual program plans approved pursuant to section 109, solely for (1) educational programs in consumer and homemaking education consisting of instructional programs, services, and activities at all educational levels for the occupations of homemaking including but not limited to, consumer education, food and nutrition, family living and parenthood education, child development and guidance, housing and home management (including resource management), and clothing	Sec. 104.902	Use of funds. A State shall use the funds available under section 150 of the Act, in accordance with its approved five-year State plan and annual program plan, solely for: (a) Programs in consumer and homemaking education; and (b) Ancillary services in relation to programs under paragraph (a) of this section. (Sec. 150(b); 20 U.S.C. 2380.)	
		Sec. 104.903	Programs in consumer and homemaking education. (a) Programs in consumer and homemaking education may be conducted at all educational levels (elementary, secondary, postsecondary or adult.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	and textiles which (A) encourage participation of both males and females to prepare for combining the roles of homemakers and wage earners; (B) encourage elimination of sex stereotyping in consumer and homemaking education by promoting the development of curriculum materials which deal (i) with increased numbers of women working outside the home, and increased numbers of men assuming homemaking responsibilities and the changing career patterns for women and men and (ii) with appropriate Federal and State laws relating to equal opportunity in education, and employment; (C) give greater consideration to economic, social, and cultural conditions and needs especially in economically depressed areas and such courses may include where appropriate bilingual instruction; (D) encourage outreach programs in communities for youth and adults giving considerations to special needs such as, but not limited to, aged, young children, school-age parents, single parents, handicapped persons, educationally disadvantaged persons, and programs connected with health care delivery systems, and programs providing services for courts and correctional institutions; (E) prepare males and females who have entered or are preparing to enter the work of the home; (F)		(b) Programs in consumer and homemaking education consist of instructional programs, services, and activities for the occupation of homemaking. (c) Programs for the occupation of homemaking include (but are not limited to): (1) Consumer education; (2) Food and nutrition; (3) Family living and parenthood education; (4) Child development and guidance; (5) Housing and home management (including resource management); and (6) Clothing and textiles. (Sec. 150(b); 20 U.S.C. 2380.)	
		Sec. 104.904	Purpose of programs in consumer and homemaking education. A State shall set forth in the five-year State plan and annual program plan the programs in consumer and homemaking education which it intends to support. Funds available under section 150 of the Act shall only be provided to support programs in consumer and homemaking education which: (a) Encourage participation of both males and females to prepare for combining the roles of homemakers and wage earners; (b) Encourage elimination of sex stereotyping by promoting the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	emphasize consumer education, management of resources, promotion of nutritional knowledge and food use, and parenthood education to meet the current societal needs, and (2) ancillary services, activities and other means of assuring quality in all homemaking education programs such as teacher training and supervision, curriculum development, research, program evaluation, special demonstration, and experimental programs, development of instructional materials, exemplary projects, provision of equipment, and State administration and leadership. "(c) Notwithstanding the provisions contained in section 111(a), from a State's allotment determined under section 103 for any fiscal year from the funds appropriated pursuant to section 1 (c), the Commissioner shall pay to such State an amount equal to 50 per centum of the amount expended for the purposes set forth in subsection (b), except that the Commissioner shall pay an amount to each State equal to 90 per centum of the amount used in areas described in subsection (d). "(d) At least one-third of the Federal funds made available under this section to each State shall be used in economically depressed areas or areas with high		development of curriculum materials which deal with: (1) Increased numbers of women working outside the home; (2) Increased numbers of men assuming homemaking responsibilities; (3) Changing career patterns of men and women; and (4) Appropriate Federal and State laws relating to equal opportunity in education and employment; (c) Give greater consideration to economic, social, and cultural conditions and needs, especially in economically depressed areas and, where appropriate, to bilingual instruction; (d) Encourage eligible recipients to operate outreach programs in communities for youth and adults, giving consideration to their special needs, such as (but not limited to): (1) The aged; (2) Young children; (3) School-age parents; (4) Single parents; (5) Handicapped persons; (6) Educationally disadvantaged persons; (7) Programs connected with health care delivery systems, such as providing parenthood education, nutrition education and consumer education; and (8) Programs providing services for courts	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	rates of unemployment for programs designed to assist consumers and to help improve home environments and the quality of family life.		and correctional institutions, such as providing child development and guidance programs for short term court offenders; (e) Prepare males and females who have entered or are preparing to enter into the work of the home; and (f) Emphasize the following areas in order to meet current societal needs: (1) Consumer education; (2) Management of resources; (3) Promotion of nutritional knowledge and food use; and (4) Promotion of parenthood education. (Sec. 150(b); 20 U.S.C. 2380.)	
		Sec. 104.905	Ancillary services. A State may use funds available under section 150 of the Act to provide ancillary services, activities, and other means of assuring quality in all consumer and homemaking education programs. These ancillary services may include (but are not limited to): (a) Teacher training; (b) teacher supervision; (c) curriculum development; (d) research; (e) program evaluation; (f) special demonstration and experimental programs; (g) development of instructional materials; (h) exemplary projects; (i) provision of equipment; (j) State administration and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			leadership; and (k) guidance and counseling. (Implements sec. 150(b)(2); 20 U.S.C. 2380.)	
		Sec. 104.906	Federal share. (a) A State shall use funds appropriated under section 102(c) of the Act for section 150 of the Act to pay up to 50 percent of the cost of (1) programs in consumer and homemaking education under Secs. 104.903 and 104.904 and (2) ancillary services and activities under Sec. 104.905. (b) A State shall use at least one-third of the funds available as stated in paragraph (a) to pay up to 90 percent of the cost of programs in economically depressed areas or areas with high rates of unemployment for program designed to: (1) Assist consumers; (2) help improve home environments; and (3) help improve the quality of family life. (Sec. 150(c), (d); 20 U.S.C. 2380.)	
	"PART B -- NATIONAL PROGRAMS "SUBPART 1 -- GENERAL PROVISIONS "FEDERAL ADMINISTRATION			
20 USC 2390	"Sec. 160.(a) There is established in the United States Office of Education a Bureau of Occupational and Adult Education (hereinafter in			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	this Act referred to as the 'Bureau'), which shall be responsible for (1) the administration of all the programs authorized by this Act and the Adult Education Act,			
20 USC 1201 note.	(2) functions of the Office of Education relating to manpower training and development, (3) functions of that Office relating to postsecondary vocational, technical, and occupational training funded under this Act, (4) the administration of any other Act of Congress vesting authority in the Commissioner for vocational, occupational, and adult education, and (5) the administration of those portions of any Act of Congress relating to career education which are relevant to the purposes of other Acts of Congress administered by the Bureau. "(b)(1) The Bureau shall be headed by a person (appointed or designated by the Commissioner) who is highly qualified in the fields of vocational, technical, and occupational education, who is accorded the rank of Deputy Commissioner, and who shall be compensated at the rate specified for grade 18 of the General Schedule set forth in section 5332 of title 5, United States Code.			
5 USC 5332 note.	"(2) Additional positions are created for, and shall be assigned to, the Bureau as follows:			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(A) three positions to be placed in grade 17 of such General Schedule, one of which shall be filled by a person with broad experience in the field of junior and community college education, "(B) seven positions to be placed in grade 16 of such General Schedule, at least two of which shall be filled by persons with broad experience in the field of postsecondary-occupational education in community and junior colleges, at least one of which shall be filled by a person with broad experience in education in private proprietary institutions, and at least one of which shall be filled by a person with professional experience in occupational guidance and counseling, and "(C) three positions which shall be filled by persons at least one of whom is a skilled worker in a recognized occupation, another is a subprofessional technician in one of the branches of engineering, and the other is a subprofessional worker in one of the branches of social and medical services, who shall serve as senior advisers in the administration of the programs in the Bureau. "(3) The Commissioner shall assign to the Bureau, by the end of fiscal year 1978, at least 50 per centum more			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 801 note.	persons to directly administer the programs authorized under this Act than were assigned to directly administer this Act during fiscal year 1976. This system shall include information resulting from the evaluations required to be conducted by section 112(b) (as such section will be in effect on October 1, 1977) and other information on vocational-- "(A) students (including information on their race and sex), "(B) programs, "(C) program completers and leavers, "(D) staff, "(E) facilities, and "(F) expenditures. "(2) In developing this system, the Commissioner and the Administrator shall endeavor as much as possible to make the system compatible with the occupational information data system developed pursuant to subsection (b) and other information systems involving data on programs assisted under the Comprehensive Employment and Training Act of 1973.			Comprehensive Employment and Training Act. p. 357
	"(3)(A) After the completion of the development of these information elements and uniform definitions pursuant to paragraph (1), the Administrator shall immediately begin to design, implement, and operate this information system which shall be in full operation for the			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	fiscal year beginning October 1, 1978. "(B) Any State receiving assistance under this Act shall cooperate with the Administrator in supplying the information required to be submitted by the Administrator and shall comply in its reports with the information elements and definitions developed jointly by the Administrator and the Commissioner pursuant to paragraph (1). Each State shall submit this data to the Administrator in whatever form he requires; and, whenever possible, this reporting shall include reporting of data by labor market areas within the State. "(4) The Administrator shall have the responsibility for updating this national vocational education information and accounting system and for preparing annual acquisition plans of data for operating this system. These plans shall be submitted to the Commissioner for his review and comment.			
National Occupational Information Coordinating Committee. Establishment.	"(b)(1) There is hereby established a National Occupational Information Coordinating Committee which shall consist of the Commissioner, the Administrator, the Commissioner of Labor Statistics, and the Assistant Secretary for Employment and Training. This Committee, with funds available to it under section 103(a)			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	(as such section will be in effect on the date of the enactment of the Education Amendments of 1976 and on October 1, 1977), shall-- "(A) in the use of program data and employment data, improve coordination between, and communication among, administrators and planners of programs authorized by this Act and by the Comprehensive Employment and Training Act of 1973, employment security agency administrators, research personnel, and employment and training planning and administering agencies at the Federal, State, and local levels; "(B) develop and implement, by September 30, 1978, an occupational information system to meet the common occupational information needs of vocational education programs and employment and training programs at the national, State, and local levels, which system shall include data on occupational demand and supply based on uniform definitions, standardized estimating procedures, and standardized occupational classifications; and "(C) assist State occupational information coordinating committees established pursuant to paragraph (2). "(2) By September 30, 1977, each State receiving assistance under			Comprehensive Employment and Training Act. p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 801 note.	this Act and under the Comprehensive Employment and Training Act of 1973 shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State Manpower Services Council, and the agency administering the vocational rehabilitation program. This committee shall, with funds available to it from the National Coordinating Committee established pursuant to paragraph (1), implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under this Act and of the administering agencies under the Comprehensive Employment and Training Act of 1973.			Comprehensive and Training Act of 1973.

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"VOCATIONAL EDUCATION DATA AND OCCUPATIONAL INFORMATION DATA SYSTEMS		VOCATIONAL EDUCATION INFORMATION DATA SYSTEM	
20 USC 2391	"Sec. 161.(a)(1) The Commissioner and the Administrator of the National Center for Education Statistics shall, by September 30, 1977, jointly develop information elements and uniform definitions for a national vocational education data reporting and accounting system. This system shall include information resulting from the evaluations required to be conducted by section 112 (as such section will be in effect on October 1, 1977) and other information on vocational-- "(A) students (including information on their race and sex), "(B) programs, "(C) program completers and leavers, "(D) staff, "(E) facilities, and "(F) expenditures. "(2) In developing this system, the Commissioner and the Administrator shall endeavor as much as possible to make the system compatible with the occupational information data system developed pursuant to subsection (b) and other information systems involving data on programs assisted under the	Sec. 104.116	Vocational education data system. (a) The Commissioner and the Administrator of NCES will jointly develop information elements and uniform definitions for a national vocational education data reporting and accounting system. (b) This system will include information resulting from the evaluations under section 112(b) of the Act (Secs. 104.402 and 104.404) and other information on vocational: (1) Students (including information on their race and sex); (2) Programs; (3) Program completers and leavers; (4) Staff; (5) Facilities; and (6) Expenditures. (c) This system will be compatible insofar as possible with the occupational information data system developed under section 161(b) of the Act by the National Occupational Information Coordinating Committee and with other information systems involving data on programs assisted under CETA. (Interprets 161(a); 20 USC 2391.)	Comprehensive Employment and Training Act of 1973 p. 357
20 USC 801 note.	Comprehensive Employment and Training Act of 1973. "(3)(A) After the			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	completion of the development of these information elements and uniform definitions pursuant to paragraph (1), the Administrator shall immediately begin to design, implement, and operate this information system which shall be in full operation for the fiscal year beginning October 1, 1977. "(B) Any State receiving assistance under this Act shall cooperate with the Administrator in supplying the information required to be submitted by the Administrator and shall comply in its reports with the information elements and definitions developed jointly by the Administrator and the Commissioner pursuant to paragraph (1). Each State shall submit this data to the Administrator in whatever form he requires; and, whenever possible, this reporting shall include reporting of data by labor market areas within the State. "(4) The Administrator shall have the responsibility for updating this national vocational education information and accounting system and for preparing annual acquisition plans of data for operating this system. These plans shall be submitted to the Commissioner for his review and comment. "(b)(1) There is hereby established a National Occupational Information Coordinating Committee		NATIONAL AND STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEES	
		Sec. 104.121	Establishment of National Occupational Information Coordinating Committee. Section 161(b) of the Act establishes a National Occupational Information Coordinating Committee composed of the Commissioner of Education and the Administrator of the National Center for Education Statistics, from the Department of Health, Education, and Welfare, and the Assistant Secretary of Labor for Employment and Training and the Commissioner of the Bureau of Labor Statistics, from the Department of Labor. (Sec. 161(b); 20 U.S.C. 2391(b).)	
		Sec. 104.122	Requirement to establish State occupational information coordinating committees. (a) Each State receiving assistance under the Act is required by section 161(b)(2) of the Act to establish a State occupational information coordinating committee by September 30, 1977. (Implements Sec. 161(b)(2); 20 U.S.C. 2391.) (b) The State occupational information coordinating committee shall be composed of a representative of each of the following: (1) The State board;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
National Occupational Information Coordinating Committee. Establishment.	which shall consist of the Commissioner, the Administrator, the Commissioner of Labor Statistics, and the Assistant Secretary for Employment and Training. This Committee, with funds available to it under section 103(a) (as such section will be in effect on October 1, 1977), shall-- "(A) in the use of program data and employment data, improve coordination between, and communication among, administrators and planners of programs authorized by this Act and by the Comprehensive Employment and Training Act of 1973, employment security agency administrators, research personnel, and employment and training planning and administering agencies at the Federal, State, and local levels; "(B) develop and implement, by September 30, 1977, an occupational information system to meet the common occupational information needs of vocational education programs and employment and training programs at the national, State, and local levels, which system shall include data on occupational demand and supply based on uniform definitions, standardized estimating procedures and standardized occupational classifications; and "(C) assist State occupational information		2) The State employment security agency; (3) The State Manpower Services Council; and (4) The agency administering the vocational rehabilitation program. (Sec. 161(b)(2); 20 U.S.C. 2391.) (c) The representatives shall be selected by the respective State board, agency, or council. (Implements Secs. 103(a)(1)(A), 161(b)(2); 20 U.S.C. 2302, 2391)	Comprehensive Employment and Training Act of 1973. p. 357 20 USC 2303 Sec.103(a)(1)(A). p. 5
		Sec. 104.123	Duties of the State occupational information coordinating committee. (a) The State occupational information coordinating committee, with funds available to it from the National Occupational Information Coordinating Committee shall implement an occupational information system in the State which will meet the common needs for the planning for, and operation of, programs of the State board assisted under this Act and of the administering agencies under the Comprehensive Employment Training Act. (Sec. 161(b)(2); 20 U.S.C. 2391.) (b) A State occupational information coordinating committee shall use funds received from the National Occupational Information Coordinating Committee in accordance with guidance, direction or standards	Comprehensive Employment and Training Act of 1973 p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 801	coordination committees established pursuant to paragraph (2). "(2) By September 30, 1977, each State receiving assistance under this Act and under the Comprehensive Employment and Training Act of 1973 shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State Manpower Services Council, and the agency administering the vocational rehabilitation program. This committee shall, with funds available to it from the National Coordinating Committee established pursuant to paragraph (1), implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under this Act and of the administering agencies under the Comprehensive Employment and Training Act of 1973.		adopted by the National Occupational Information Coordinating Committee. (Implements Sec. 161(b)(2); 20 U.S.C. 2391.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION			
20 USC 2392 20 USC 1244	"Sec. 162(a) The National Advisory Council on Vocational Education, established pursuant to section 104(a) of the Vocational Education Act of 1963, in effect prior to the enactment of the Education Amendments of 1976, shall continue to exist during the period for which appropriations are authorized under this Act, Individuals who are members of the Council on the date of the enactment of this Act may continue to serve for the terms for which they were appointed. Members appointed to succeed such individuals shall be appointed by the President for terms of three years. The Council shall consist of twenty-one members, each of whom shall be designated as representing one of the categories set forth in the following sentence. The National Advisory Council shall include individuals-- "(1) representative of labor and management, including persons who have knowledge of semi-skilled, skilled, and technical employment; "(2) representative of new and emerging occupational fields; "(3) knowledgeable in the field of vocational guidance and counseling;			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 951	"(4) representing the National Commission for Manpower Policy created pursuant to title V of the Comprehensive Employment and Training Act of 1973;			Comprehensive Employment and Training Act of 1973. p. 357
	"(5) representing nonprofit private schools;			
	"(6) who are women with backgrounds and experiences in employment and training programs, who are knowledgeable with respect to problems of sex discrimination in job training and in employment, including women who are members of minority groups and who have, in addition to such backgrounds and experiences, special knowledge of the problems of discrimination in job training and employment against women who are members of such groups;			
	"(7) knowledgeable about the administration of State and local vocational education programs, including members of school boards and private institutions;			
20 USC 880b-1	"(8) experienced in the education and training of handicapped persons and of persons of limited English-speaking ability (as defined in section 703(a) of the Elementary and Secondary Education Act of 1965);			
	"(9) familiar with the special problems and needs of indivduals disadvantaged by their socioeconomic backgrounds;			
	"(10) having special knowledge of postsecondary and adult vocational			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	education programs; "(11) familiar with the special problems of individuals in correctional institutions; and "(12) representative of the general public who are not Federal employees, including parents and students, except that they must not be representative of categories (1) through (11), and who shall constitute not less than one-third of the total membership. The Naitonal Council shall have as a majority of its members persons who are not educators or administrators in the field of education. In appointing the National Advisory Council, the President shall insure that there is appropriate representation of both sexes, racial and ethnic minorities, and the various geographic regions of the country. The President shall select the chairman. The National Advisory Council shall meet at the call of the Chairman, but not less than four times a year. "(b) The National Advisory Council shall-- "(1) advise the President, Congress, Secretary, and Commissioner concerning the administration of, preparation of general regulations and budget requests for, and operation of, vocational education programs supported with assistance under this Act;			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(2) review the administration and operation of vocational education programs under this Act, and other pertinent laws affecting vocational education and manpower training (including the effectiveness of such programs in meeting the purposes for which they are established and operated), make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this Act and such other pertinent laws) to the President, Congress, Secretary, and Commissioner; "(3) make such other reports or recommendations to the President, Congress, Secretary, Commissioner, or head of any other Federal department or agency as it may deem desirable; "(4)(A) identify, after consultation with the National Commission for Manpower Policy, the vocational education and employment and training needs of the Nation and assess the extent to which vocational education, special education, employment training, vocational rehabilitation, and other programs under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs; and (B) comment, at			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
29 USC 955	least once annually, on the reports of the National Commission, which comments shall be included in one of the reports submitted by the National Advisory Council pursuant to this section and in one of the reports submitted by the National Commission pursuant to section 505 of the Comprehensive Employment and Training Act of 1973;			Comprehensive Employment and Training Act of 1973 p. 357
	"(5) conduct such studies, hearings, or other activities as it deems necessary to enable it to formulate appropriate recommendations;			
	"(6) conduct independent evaluations of programs carried out under this Act and publish and distribute the results thereof; and			
	"(7) provide technical assistance and leadership to State advisory councils established pursuant to section 105, in order to assist them in carrying out their responsibilities under this Act.			
Appropriation authorization	"(c) There are authorized to be appropriated $450,000 for the fiscal year ending September 30, 1978, $475,000 for the fiscal year ending September 30, 1979, and $500,000 for each of the fiscal years ending prior to September 30, 1982 for the purposes of this subsection. The Council is authorized to use the funds appropriated pursuant to the preceding sentence to carry out its functions as set forth in this section and to			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	engage such technical assistance as may be required to assist it in performing these functions. The National Council may accept gifts if the acceptance of such gifts will better enable it to carry out its functions under this section. "SUBPART 2--PROGRAMS OF NATIONAL SIGNIFICANCE "PROGRAM IMPROVEMENT		GENERAL	
20 USC 2401	"Sec. 171. (a) Funds reserved to the Commissioner under section 103 for programs under this part shall be used primarily for contracts, and in some cases for grants, for-- "(1) activities authorized by sections 131, 132, 133, 134, 135, and 136, if such activities are deemed to be of national significance by the Commissioner; "(2) support of a national center for research in vocational education, chosen once every five years, which center shall be a nonprofit agency, shall be assisted by an advisory committee appointed by the Commissioner, shall	Sec. 105.1	Scope. Part 105 contains regulations interpreting or implementing Part B (entitled "National Programs") of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94-482 (referred to as "the Act"). Part 105 also contains regulations interpreting or implementing the Commissioner's discretionary program of contracts with Indian tribes contained in section 103(a)(1)(B) of the Act. (Sec. 103(a)(1)(B); Secs. 171 through 195; 20 U.S.C. 2303, 2401 et seq.)	20 USC 2303 Sec.103(a)(1)(B). p. 5
	have such locations, including contracts with one or more regional research centers, as shall be determined by the Commissioner after consultation with the national center and its advisory committee taking into	Sec. 105.2	Purpose. The purpose of Part 105 is to set forth the regulations which govern the Commissioner's discretionary programs of grants and contracts for vocational education. (Secs. 171 through 195; 20 U.S.C. 2401 et seq.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	consideration the vocational education research resources available, geographical area to be served and the schools, programs, projects, and students and areas to be served by research activities, and shall, either directly or through other public agencies-- "(A) conduct applied research and development on problems of national significance in vocational education;	Sec. 105.3	Definitions. The definitions common to all parts of the Act are contained in section 195 of the Act. These definitions and additional definitions necessary for the State vocational education programs are set forth in Appendix A of Part 104. Definitions necessary only for Part 105 are set forth in this Part 105 in the subparts in which they apply. (Sec. 195; 20 U.S.C. 2461.)	20 USC 2461 Sec. 195. p. 250
	"(B) provide leadership development through an advanced study center and inservice education activities for State and local leaders in vocational education; "(C) disseminate the results of the research and development projects funded by the center; "(D) develop and provide information to facilitate national planning and policy development in vocational education;	Sec. 105.4	Applicability of General Education Provisions Regulations. Provisions in Parts 100 and 100a of the General Education Provisions Regulations (45 CFR Parts 100 and 100a), entitled "General Provisions for Office of Education Programs," are applicable to programs under this Part 105. (45 CFR Parts 100, 100a.)	
	"(E)(i) act as a clearinghouse for information on contracts made by the States pursuant to section 131, section 132, and section 133 and on contracts made by the Commissioner pursuant to this section; and (ii) compile an annotated bibliography of research, exemplary and innovative program projects, and curriculum development projects assisted with funds made available under this Act since July 1, 1970; and	Sec. 105.5	Applicability of technical review criteria. (a) The technical review criteria in Sec. 105.110 for Program Improvement and in Sec. 105.626 for Bilingual Vocational Instructional Materials, Methods, and Techniques Program apply to the review of applications submitted for grants only. (b) The evaluation of proposals submitted for procurement contracts for the two programs identified in paragraph	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(F) work with States, local educational agencies, and other public agencies in developing methods of evaluating programs, including the follow-up studies of program completers and leavers required by section 112, so that these agencies can offer job training programs which are more closely related to the types of jobs available in their communities, regions, and States; and "(3) training and development programs as described in section 172. "(b)(1) The Commissioner shall not make a grant pursuant to paragraph (1) of subsection (a) unless the applicant can demonstrate a reasonable probability that		(a) of this section are made in accordance with the Federal Procurement Regulations, Title 41, Code of Federal Regulations, Chapters 1 and 3. Technical review criteria that are consistent with the Act will be developed for each procurement contract and will be set forth specifically in the Request For Proposal (RFP) for the particular contract. These criteria will be consistent with the Act and the regulations. The RFP will be announced in the Commerce Business Daily (CBD). (45 CFR Chapters 1 and 3.) Subpart 1 -- Program Improvement	
	such grant will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such grant. "(2) Every contract made by the Commissioner for the purpose of funding exemplary and innovative projects pursuant to paragraph (1) of subsection (a) shall, to the extent consistent with the number of students enrolled in nonprofit private schools in	Sec. 105.101	Purpose. The purpose of program improvement is to support projects for the improvement of vocational education and a national center for research in vocational education as authorized in section 171 of the Act. Funds available to the Commissioner for program improvement under section 103 of the Act will be used primarily for contracts and in some cases for grants. (Secs. 103, 171; 20 U.S.C. 2303, 2401.)	20 USC 2303 Sec. 103 p. 5
	the area to be served whose educational needs are of the type which the project involved is	Sec. 105.102	National center for research in vocational education. (a) The Commissioner will support a national center for research	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	to meet, provide for the participant of such students; and such contract shall also provide that the Federal funds will not be commingled with State or local funds. "(3) The Commissioner shall, from the funds made available to him under this section, make contracts to convert to use in local educational agencies, in private nonprofit schools, and in other public agencies, curriculum materials involving job preparation which have been prepared for use by the armed services of the United States.		in vocational education. The center (a non-profit agency) will be chosen once every five years. The Commissioner will appoint an advisory committee to assist the center. The center shall have such research locations, including contracts with one or more regional research centers, as shall be determined by the Commissioner after consultation with the national center and its advisory committee taking into consideration the vocational education research resources available, geographical area to be served, and the schools, programs, projects, and students and areas to be served by research activities. (b) The center shall directly or through other public agencies: (1) Conduct applied research and development on problems of national significance in vocational education; (2) Provide leadership development through an advanced study center and in-service education activities for State and local leaders in vocation education; (3) Disseminate the results of research and development projects funded by the center; (4) Develop and provide information to facilitate national planning and policy development in vocational education;	
Coordinating Committee on Research in Vocational Education. Establishment.	"(4) There is hereby established a Coordinating Committee on Research in Vocational Education within the Education Division of the Department of Health, Education, and Welfare which shall be composed of the Director of the National Institute of Education, the Commissioner, and the Director of the Fund for the Improvement of Postsecondary Education, or their representatives. This Committee shall-- "(A) develop a plan for each fiscal year (i) establishing national priorities for the use of funds available to these agencies for vocational education research, career education research, education and work research, development, exemplary and innovative program projects, and curriculum development projects; and (ii) coor-			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	dinating the efforts of these agencies in seeking to achieve these national priorities in order to avoid duplication of effort; and "(B) develop an effective management information system on the projects funded pursuant to this plan in order to achieve the best possible monitoring and evaluation of these projects and the widest possible dissemination of their results. "(5)(A) From the sums reserved to the Commissioner under section 103 for this part, the Commissioner may pay all or part of the costs of contracts and grants authorized by this section. "(B) Funds reserved for contracts and grants under this section shall be available for expenditure until expended, unless a law is enacted in specific restriction of this subsection; and these funds may be used for contracts and grants for a period not to exceed three fiscal years.		(5) Act as a clearinghouse for information on projects supported by the States and the Commissioner and compile an annotated bibliography of research, exemplary and innovative projects, and curriculum development projects assisted with funds made available under this Act since July 1, 1970; and (6) Work with States, local educational agencies, and other public agencies in developing methods of evaluating programs, including the follow-up studies of program completers and leavers required by section 112 of the Act, so that these agencies can offer job training programs which are more closely related to the types of jobs available in their communities, regions, and States. (Sec. 171(a)(2); 20 U.S.C. 2401.)	
		Sec. 105.103	Armed services curriculum materials. The Commissioner will make contracts to convert to use in local educational agencies, private nonprofit schools, and other public agencies curriculum materials involving job preparation which have been prepared for use by the armed services of the United States. (Sec. 171(b)(3); 20 U.S.C. 2401.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 105.104	Authorized activities. (a) The Commissioner will support projects of national significance for improvement of vocational education. The projects include the following activities as authorized in sections 131 through 136 of the Act: (1) Research (section 131 of the Act); (2) Exemplary and innovative programs (section 132 of the Act); (3) Curriculum development (section 133 of the Act); (4) Vocational guidance and counseling (section 134 of the Act); (5) Vocational education personnel training (section 135 of the Act); and (6) Grants to assist in overcoming sex bias and sex stereotyping (section 136 of the Act). (b) Functions under the above may include: applied research and development; experimental and pilot programs; curriculum revision and development; demonstration, dissemination, and utilization of research and development products; personnel training; and evaluation. (Secs. 131 through 136, 171(a)(1); 20 U.S.C. 2351-56, 2401.)	20 USC 2351-56 Sec. 131 - 136. pp. 137-153
		Sec. 105.105	Eligible applicants. (a) Eligible applicants for project support include: (1) Public organizations, institutions, and agencies;	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(2) Nonprofit and profit-making private organizations, institutions, and agencies; and (3) Individuals. (b) Profit-making private organizations, institutions, and agencies, and individuals are eligible for contracts only. (c) Eligible applicants for the national center for research in vocational education include nonprofit agencies only. (Interprets Sec. 171; 20 U.S.C. 2401.)	
		Sec. 105.106	Cost sharing. No cost sharing is required. The Commissioner may pay all or part of the cost. (Interprets Sec. 171(b)(5)(A); 20 U.S.C. 2401.)	
		Sec. 105.107	Duration of project support. The Commissioner will not support a project for a period to exceed three fiscal years. (Sec. 171(b)(5)(B); 20 U.S.C. 2401.)	
		Sec. 105.108	Improved teaching techniques or curriculum materials. The Commissioner will not make a grant pursuant to Sec. 105.104 unless the applicant can demonstrate a reasonable probability that the grant will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			learning situations within five years after the termination date of the grant. (Sec. 171(b)(1); 20 U.S.C. 2401.)	
		Sec. 105.109	Exemplary and innovative projects. (a) The Commissioner will make a contract for an exemplary and innovative project only if the project provides for the participation of students enrolled in nonprofit private schools consistent with: (1) The number of such students in the area to be served by the project; and (2) The educational needs of those students is of the type which the project involved is to meet. (b) The contract shall provide that the Federal funds will not be commingled with State or local funds. (Sec. 171(b)(2); 20 U.S.C. 2401.)	
		Sec. 105.110	Technical review criteria. The following criteria will be used in reviewing applications. These criteria are consistent with 45 CFR 100a.26. Review of Applications, in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. Applications that receive less than 50 points will not be funded. (a) National need. (Maximum 15 points.) The need section clearly: (1) Describes the national need in vocational education for the proposed project; (2) Provides specific evidence of the need; (3) Indicates specifically who or what will be helped; and (4) Describes the problem rather than symptoms of the problem. (b) Literature review. (Maximum 5 points.) The literature review is sufficiently comprehensive to: (1) Establish the basis for the problem; (2) Describe the problem in contrast to the symptoms of the problem; (3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures, when appropriate; and (4) Describe what has been done previously to alleviate the problem and point out the gaps	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			that will be alleviated by this specific proposed work. (c) Objectives. (Maximum 10 points.) The objectives are related to the problem and: (1) Are significant for vocational education; (2) Clearly describe proposed project outcomes; (3) Are capable of being attained; and (4) Are measurable. (d) Plan. (Maximum 18 points.) The plan clearly describes: (1) The overall design for the proposed project; and (2) The specific procedures by which each objective will be accomplished. Normally the plan will include: (i) Precise definitions of terms; (ii) Description of the characteristics and number of subjects; (iii) Sampling procedures and control groups; (iv) Instrumentation; and (v) Statistical and analytical procedures. (e) Management plan. (Maximum 8 points.) The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c). (f) Evaluation plan. (Maximum 8 points.) The plan includes valid and reliable instruments and procedures for assessing and documenting the impact of project results and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			end products or outcomes in terms of the achievement of project goals and objectives. (g) Results, end products, outcomes, and dissemination. (Maximum 10 points.) The application clearly describes: (1) What will be delivered to the government; (2) The format in which the results, products, or outcomes will be delivered to the government; (3) The way in which results, products, or outcomes will be developed or provided for dissemination purposes to specified user populations; and (4) The procedures to be used in disseminating the results, end products, or outcomes at the local, State and/or national levels. (h) Staff competencies and experience. (Maximum 7 points.) The application clearly describes: (1) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups, and consultants; (2) Time commitments planned for the project by the project director, key staff, advisory groups, and consultants; (3) Evidence of past and successful experience of the proposed	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			project director and key staff members in similar or related projects; (4) Use of professional staff members from minorities or women; and (5) The competencies that are required for the proposed budget. (i) *Budget and cost effectiveness.* Maximum 7 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective with respect to proposed results, products, or outcomes. (j) *Institutional capability and commitment.* (Maximum 4 points.) The application provides adequate evidence of: (1) Institutional or individual's experience and commitment to the proposed work; (2) Appropriate facilities and equipment; and (3) Assurance of support from cooperating agencies, local educational agencies, postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project. (k) *Sex bias and stereotyping.* (Maximum 8 points.) The application provides appropriate plans to eliminate sex bias and stereotyping in	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			the proposed results, end products, and outcomes, and the proposed dissemination plans. (Implements Sec. 171; 20 U.S.C. 2401.)	
		Sec. 105.111	Additional application review factors. In addition to the criteria listed in Sec. 105.110, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications: (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects. (Implements Sec. 171; 20 U.S.C. 2401.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"TRAINING AND DEVELOPMENT PROGRAMS FOR VOCATIONAL EDUCATION PERSONNEL		SUBPART 3--TRAINING AND DEVELOPMENT PROGRAMS FOR VOCATIONAL EDUCATION PERSONNEL LEADERSHIP DEVELOPMENT AWARD PROGRAM	
20 USC 2402	"Sec. 172.(a) From funds available to him under section 103, the Commissioner shall provide (1) opportunities for experienced vocational educators to spend full time in advanced study of vocational education for a period not to exceed three years in length;	Sec. 105.301	Purpose. The purpose of the leadership development award program is to provide opportunities for experienced vocational educators to spend full time in advanced study of vocational education. (Sec. 172(a)(1); 20 U.S.C. 2402.)	
	(2) opportunities for certified teachers who have been trained to teach in other fields to become vocational educators, if those teachers have skills and experience in vocational fields for which they can be trained to be vocational educators; and (3) opportunities for persons in industry who have skills and experience in vocational fields for which there is a need for vocational educators, but who do not necessarily have baccalaureate degrees, to become vocational educators. "(b)(1) In order to meet the needs in all States for qualified vocational education personnel (such as administrators, supervisors, teacher educators, researchers, guidance and counseling personnel,	Sec. 105.302	Leadership development awards. (a) Awards. The Commissioner will make leadership development awards to qualified vocational education personnel (such as administrators, supervisors, teacher educators, researchers, guidance and counseling personnel, and instructors in vocational education) for graduate training in an approved vocational education leadership development program of an approved institution of higher education. (Sec. 172(b)(1), (3); 20 U.S.C. 2402.) (b) Award period. Leadership development awards will be made for a period not to exceed 36 months. (Sec. 172(b)(2)(A); 20 U.S.C. 2402.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	and instructors in vocational education programs) the Commissioner shall make available leadership development awards in accordance with the provisions of this subsection only upon his determination that-- "(A) persons selected for awards have had not less than two years of experience in vocational education or in industrial training, or military technical training; or, in the case of researchers, experience in social science research which is applicable to vocational education; "(B) persons receiving such awards are currently employed or are reasonably assured of employment in vocational education and have successfully completed, as a minimum, a baccalaureate degree program; and	Sec. 105.303	Equitable geographical distribution. In order to meet the needs for qualified vocational educational personnel in all the States, the Commissioner, without using any pre-determined formula for allocation among the States, but after applications have been reviewed and scored on their merits, will make leadership development awards in an equitable manner among the States. The Commissioner will take into account such factors as: (a) The State's vocational education enrollments; and (b) The incidence of youth unemployment and school dropouts in the State. (Sec. 172(b)(4); 20 U.S.C. 2402.)	
	"(C) persons selected are recommended by their employer, or others, as having leadership potential in the field of vocational education and are eligible for admission as a graduate student to a program of higher education approved by the Commission under paragraph (2). "(2)(A) The Commissioner shall, for a period not to exceed three years, pay to persons selected for leadership development awards such stipends (including such allowances or subsistence and other	Sec. 105.304	Eligibility of individuals. (a) A person is eligible to receive a leadership development award if such person: (1) Has had not less than two years of experience in vocational education or in business or industrial training or military technical training, or in the case of researchers, experience in social science research which is applicable to vocational education; and (2) Is currently employed or is reasonably assured of employment in vocational education and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs. "(B) The Commissioner shall, in addition to the stipends paid to persons under subparagraph (A), pay to the institution of higher education at which such person is pursuing his course of study such amount as the Commissioner may determine to be consistent with the prevailing practices under comparable federally supported programs not to exceed the equivalent of $1,500 per person per academic year or its equivalent, and $1,000 per person per summer session or its equivalent,		has successfully completed, as a minimum, a baccalaureate degree program; and (3) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and is eligible for admission as a graduate student to a program of higher education approved by the Commissioner under Sec. 105.311. (b) In order to receive a leadership development award the person selected shall enroll for full-time graduate study in a vocational education leadership development program approved under Sec. 105.311. (Sec. 172(b)(1), (5); 20 U.S.C. 2402.)	
	but any amount charged such person for tuition and nonrefundable fees and deposits shall be deducted from the amount payable to the institution of higher education under this subsection. Any funds from grants received under this paragraph which remain after deducting normal tuition fees, and deposits attributable to such students, shall be used by the institution receiving such funds for the purpose of improving the program of vocational education offered by that institution. "(3) The Commissioner shall approve the vocational educational	Sec. 105.305	Application procedures. (a) *Submission of applications*. Any eligible individual who wishes to receive a leadership development award shall submit an application to the Commissioner and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident. (b) *Role of the State board*. The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting, and from representatives of vocational education programs in institutions of higher	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	leadership development program of an institution of higher education only upon finding that-- "(A) the institution offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, guidance and counseling, research, and curriculum development; "(B) such program is designed to further substantially the objective of improving vocational education through providing opportunities for graduate training of vocational teachers, supervisors, and administrators, and of university level vocational education teacher educators and researchers; and "(C) such programs are conducted by a school of graduate study in the institution of higher education. "(4) in order to meet the needs for qualified vocational education personnel such as teachers, administrators, supervisors, and teacher educators, in vocational education programs in all the States, the Commissioner in carrying out this section shall apportion leadership development awards equitably among the States, taking into account such factors as the State's vocational education enrollments and the incidence of youth unemployment and school dropouts in the		education, will: (1) Review the application; (2) Collect advice as to the merits of each application from the other agencies and the representatives noted in this paragraph; (3) Advise the Commissioner as to the merits of each application; and (4) Forward all applications and statements of advice to the Commissioner for review and decision by the Commissioner. (Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 54-55.)	
		Sec. 105.306	Stipends to individuals. (a) Academic year. Each person awarded a leadership development award is entitled to receive a stipend of: (1) $4500 for each academic year of full-time study at the institution of higher education; and (2) $675 for each academic year for each dependent. (b) Summer session. An additional stipend may be awarded of: (1) $900 for full-time summer study at the same institution of higher education; and (2) $170 for this period for each dependent. (Implements Sec. 172(b)(2)(A); 20 U.S.C. 2402.)	
		Sec. 105.307	Conditions for continued eligibility. (a) Satisfactory	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	State. "(5) Persons receiving leadership awards under the provisions of this subsection shall continue to receive the payments provided in paragraph (3) only during such periods as the Commissioner finds that they are maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field of vocational education in an institution of higher education, and are not engaging in gainful employment, other than part-time employment by such institution in teaching, research, or similar activities, approved by the Commissioner. "(6) From the funds reserved to the Commissioner pursuant to section 103 for this part, the Commissioner shall make awards meeting the requirements of paragraphs (1) through (5) of this subsection. "(7) In approving training and development programs for vocational education personnel, the Commissioner shall give special consideration to programs which are designed to familiarize awardees with new curricular materials in vocational education.		participation. A recipient of an award may continue to receive payments under Sec. 105.306 only during such periods as the Commissioner finds that the recipient: (1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education; (2) Is devoting essentially full time to such study or research; and (3) Is not engaging in gainful employment, other than part-time employment in teaching, research, or similar activities endorsed by that institution and approved by the Commissioner. (Sec. 172(b)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56.) (b) Employment limitation. The limitation with respect to employment set forth in paragraph (a)(3) of this section does not apply to the period of time between an academic year and a summer session (or between academic years if a stipend is not received under Sec. 105.306(b) for full-time study). (Implements Sec. 172(b)(5); 20 U.S.C. 2402.)	
"Institution of higher education." 20 USC 1141	"(8) For purposes of this subsection, the term 'institution of higher education' means any such institution as defined under section 1201(a) of the Higher	Sec. 105.308	Payment conditioned on appropriation. Leadership development award payments under Sec. 105.306 after the first year of the award period (in case of awards made for a period exceeding	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	Education Act of 1965. "(c)(1) In order to meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education and in order to take full advantage of the education which has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experiences in vocational fields, the Commissioner shall make available fellowships in accordance with the provisions of this subsection to such individuals upon his determination that-- "(A) individuals selected for such fellowships are presently certified, or had been so certified within the last ten years, by a State as teachers in elementary and secondary schools or in community and junior colleges, and have past or current skills and experiences in vocational fields for which they can be trained to be vocational educators; or "(B) individuals selected for such fellowships are individuals employed in industry (who need not be baccalaureate degree holders) who have skills and experiences in vocational fields for which there is a need for vocational educators, and that individuals receiving		twelve months) are subject to the continued availability of Federal funds under section 172 of the Act. (Interprets Sec. 172; 20 U.S.C. 2402.)	
		Sec. 105.309	Technical review criteria. The Commissioner will use the following criteria in reviewing applications. The criteria in 45 CFR 100a26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding. (a) Academic ability. (Maximum 30 points.) The applicant provides evidence of his or her academic ability. This must include: (1) Transcripts of grades earned in college, including graduate courses; and may include (2) Scores earned on the Graduate Record Examination, Miller Test of Analogies, or similar tests; and (3) Results earned on specific skill aptitude tests. (b) Leadership potential. (Maximum 20 points.) The applicant	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	such awards have been accepted by a teacher training institution in a program to assist those persons in gaining the skills to become a vocational educator. "(2)(A) The Commissioner shall, for a period not to exceed two years, pay to persons selected for fellowships under this subsection stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs. "(B) The Commissioner shall, in addition to the stipends paid to persons under paragraph(1), pay to the institution of higher education at which such person is pursuing his course of study such amount as the Commissioner may determine to be consistent with the prevailing practices under comparable federally supported programs not to exceed the equivalent of $4,500 per person per academic year or its equivalent, and $1,000 per person per summer session or its equivalent, but any amount charged such person for tuition and nonrefundable fees and deposits shall be deducted from the amount payable to the institution of higher education under this subsection. Any funds from grants		provides evidence of leadership potential. This may include awards or recognition received for: (1) Professional service; (2) Community activities; (3) Work with advisory committees; (4) Volunteer work (5) Outstanding skill in interpersonal relations; and (6) Other activities as appropriate. (c) Managerial skills. (Maximum 15 points.) The applicant provides information concerning his or her experience in a managerial or administrative capacity. This may include evidence of the applicant's ability in: (1) Planning; (2) Problem solving; (3) Decision making; and (4) Other skills, where appropriate. (d) Communication skills. (Maximum 20 points.) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include: (1) Public speaking experience to professional, community, or other groups; (2) Articles published in professional or popular journals; and (3) Other written materials such as reports, abstracts, and instructional materials. (e) National need. (Maximum 15 points.) The degree to which the applicant's goals, objectives, and aspirations in vocational education relate to national needs	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	received under this paragraph which remain after deducting normal tuition, fees, and deposits attributable to such students shall be used by the institution receiving such funds for the purpose of improving the program of vocational education offered by that institution. "(3) The Commissioner shall approve the program at an institution of higher education which has as its purpose assisting persons from industry in becoming vocational education teachers only upon finding that-- "(A) the institution offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, guidance and counseling, research, and curriculum development; and "(B) such program is available to persons receiving these fellowships so that they can receive the same type of education and training being offered in the institution for undergraduate students who are preparing to become vocational education teachers. "(4) In order to meet the needs for qualified vocational education teachers in vocational educational education programs in all the States, the Commissioner in carrying out this	Sec. 105.310	in vocational education, including developing expertise to serve: (1) disadvantaged persons; (2) members of minority groups, and (3) handicapped persons. (H.R. Rept. No. 94-1085, p. 55.) (g) Additional criteria. In addition to the criteria listed above the Commissioner will consider the following factors: (1) Equitable distribution among males and females; (2) Geographical distribution ; (3) Membership in minority groups. (Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, p. 55.) Assignment to approved institution. Each applicant for an award shall identify a first, second, and third choice of institutions (approved under Sec. 105.311) he or she desires to attend. The Commissioner reserves the right to redistribute award recipients among approved institutions in order to assure that each institution will have a sufficient number of awardees to assure the effectiveness of the progam of vocational leadership development. (Implements Sec. 172(a)(1); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, p. 55.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	subsection shall apportion fellowships equitably among the States, taking into account such factors as the State's vocational education enrollments, and the incidence of youth unemployment and school dropouts in the Stae. "(5) Persons receiving fellowships under the provisions of this subsection shall continue to receive the payments provided in paragraph (2) only during such periods as the Commissioner finds that they are maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field of vocational education in an institution of higher education, and are not engaging in gainful employment, other than part-time employment by such institution in teaching, research, or similar activities, approved by the Commissioner. "(6) From the funds reserved to the Commissioner pursuant to section 103 for this part, the Commissioner shall make awards meeting the requirements of paragraphs (1) through (5) of this subsection. "(7) In carrying out this subsection, the Commissioner shall, before the beginning of each fiscal year, publish a listing of the areas of teaching in vocational education which	Sec. 105.311	Institutional eligibility and approval. Upon receipt of an application from an institution of higher education requesting approval of its vocational education leadership development program, the Commissioner will approve the program only upon finding that: (a) The institution offers a comprehensive program in vocational education with adequate supporting services and disciplines, such as education administration, guidance and counseling, research, and curriculum development, including: (Sec. 172(b)(3)(A); 20 U.S.C. 2402.) (1) Training in those leadership skills necessary to increase the participation of disadvantaged minorities, and women, in vocational education programs at all levels; (Sec. 101(1); 20 U.S.C. 2301; H.R. Rept. No. 94-1085, p. 55.) (2) Resources and supporting services for at least five of the generally recognized fields of vocational education, integrated into a comprehensive approach to vocational education; (3) Practical experience and internship components; and (Implements Sec. 172(b)(3)(A); 20 U.S.C. 2402.) (4) A focus on familiarizing the individual	20 USC 2301 Sec. 101(1) p. 1

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	are presently in need of additional personnel and of the areas which will have need of additional personnel in the future; and the Commissioner shall, in making the fellowships under the authority of this subsection, grant these fellowships, to the maximum degree possible, to persons who are seeking to become teachers in the areas identified by the Commissioner as needing additional teachers.		with new curriculum materials in vocational education (Sec. 172(b)(7); 20 U.S.C. 2402.) (b) The program under paragraph (a) of this section is designed to further substantially the objective of improving vocational education by providing opportunities for graduate training for vocational education teachers, supervisors, guidance and counseling personnel, and administrators of university level vocational education teacher educators and researchers. (c) The program is conducted by a school of graduate study. (Interprets Sec. 172 (b)(3)(B); 20 U.S.C. 2402.)	
		Sec. 105.312	Institutional allowance. (a) The Commissioner will (in addition to the stipend paid to an award recipient under Sec. 105.306) pay an institutional allowance to the institution of higher education in which the recipient is pursuing a course of study, in the amount of $3,200 per participant, per academic year, with an additional $800 per participant for full-time study during the summer session. (b) The institutional allowance is made in lieu of tuition and all nonrefundable fees and deposits that would otherwise be required of the student.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) Any portion of the institutional allowance in excess of normal tuition, non-refundable fees, and deposits attributable to the awardee shall be used by the institution to improve the program of vocational education leadership development in that institution. (Implements Sec. 172(b)(2)(B); 20 U.S.C. 2402.) VOCATIONAL EDUCATION CERTIFICATION FELLOWSHIP PROGRAM	
		Sec. 105.431	Purpose. The purpose of the vocational education certification fellowship is to provide opportunities for: (a) Certified teachers who have been trained to teach in other fields to become vocational educators if those teachers have skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and (Sec. 172(a)(2); 20 U.S.C. 2402.) (b) Persons in industry, business, and agriculture who have skills and experience in vocational fields for which there is need for vocational educators (but who do not necessarily have baccalaureate degrees) to become vocational educators.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(Interprets Sec. 172(a)(3); 20 U.S.C. 2402.)	
		Sec. 105.432	Awards to two categories of fellows. The Commissioner is authorized to award fellowships to two categories of persons for undergraduate study in institutions of higher education: (a) Persons who are or have been certified by a State as teachers in elementary and secondary schools, community and junior colleges, and other thirteenth and fourteenth year programs within the ten-year period prior to the current closing date for applications under this program and who: (1) Have or have had skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained to be vocational educators; and (2) Are unable to find employment in their field of previous training. (Sec. 172(c)(1), (c)(1)(A); 20 U.S.C. 2402.) (b) Persons (not necessarily baccalaureate degree holders) employed in industry, business, or agriculture who: (1) Have skills and experience in vocational fields in which there is a need for vocational educators; and (2) Have been accepted by a teacher training	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			institution for enrollment in a program which will assist them in becoming vocational educators. (Sec. 172(c)(1)(B); 20 U.S.C. 2402.)	
		Sec. 105.433	Fellowship period. Fellowships will be made for periods not to exceed 24 months. (Sec. 172(c)(2)(A); 20 U.S.C. 2402.)	
		Sec. 105.434	Application procedures. (a) *Submission of applications*. Any eligible individual who wishes to receive a vocational education certification fellowship shall submit an application to the Commissioner and send one copy of the application to the State board for vocational education for the State in which the applicant is a resident. (b) *Role of the State board*. The State board, with advice from the State advisory council, from other agencies involved in State planning and reporting, and from representatives of vocational education programs in institutions of higher education, will: (1) Review the applications; (2) Collect advice as to the merits of each application; (3) Advise the Commissioner as to the merits of each application; and (4) Forward all applications and statements	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			of advice to the Commissioner for review and decision by the Commissioner. (Implements Sec. 172(c)(1); 20 U.S.C. 2402.; H.R. Rept. No. 94-1085, p. 54.)	
		Sec. 105.435	Equitable geographical distribution. In order to meet the needs for qualified vocational education personnel in all the States, the Commissioner, without using any pre-determined formula for allocation among the States, but after applications have been reviewed and scored on their merits will make certification fellowship awards in an equitable manner among the States, taking into account such factors as: (a) The State's vocational education enrollment; and (b) The incidence of youth unemployment and school dropouts in the State. (Sec. 172(c)(4); 20 U.S.C. 2402.)	
		Sec. 105.436	Stipend to fellows. (a) Academic year. Each person awarded a fellowship is entitled to receive a stipend of: (1) $4500 for each academic year of full-time study at the institution of higher education to which that person is assigned for the fellowship period; and (2) $675 for each academic year for each dependent.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(b) Summer session. An additional stipend may be awarded of: (1) $900 for full-time summer study at the same institution of higher education; and (2) $170 for this period for each dependent. (Implements Sec. 172(c)(2)(A); 20 U.S.C. 2402.)	
		Sec. 105.437	Conditions for continued eligibility. (a) Satisfactory participation. A recipient of a fellowship may continue to receive payment under Sec. 105.436 only during such period as the Commissioner finds that the recipient: (1) Is maintaining satisfactory proficiency in study or research in the field of vocational education in an institution of higher education; (2) Is devoting essentially full time to such study or research; and (3) Is not engaging in gainful employment, other than part-time employment in teaching, research, or similar activities endorsed by that institution and approved by the Commissioner. (Implements Sec. 172(c)(5); 20 U.S.C. 2402; H.R. Rept. No. 94-1085, pp. 55-56.) (b) Employment limitations. The limitation with respect to employment set forth in paragraph (a)(3) of this	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			section does not apply to the period of time between an academic year and a summer session, or between academic years if a stipend is not received under Sec. 105.436(b) for full-time summer study. (Interprets Sec. 172(c)(5); 20 U.S.C. 2402.)	
		Sec. 105.438	Payment conditioned on appropriation. Fellowship payments under Sec. 195.436 after the first year of the fellowship period (in case of awards made for a period exceeding twelve months) are subject to the continued availability of Federal funds under section 172 of the Act. (Interprets Sec. 172; 20 U.S.C. 2402.)	
		Sec. 105.439	Institutional allowance. (a) The Commissioner will (in addition to the stipends paid to a fellowship recipient under Sec. 105.436) pay an institutional allowance to the institution of higher education at which the recipient is pursuing his or her course of study in an amount of $2,000 per participant per academic year, with an additional $500 per participant for full-time study during the summer session; (b) The institutional allowance is made in lieu of tuition and all non-refundable fees and deposits that would otherwise be required of the fellow; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) Any portion of the institutional allowance in excess of the normal tuition, nonrefundable fees, and deposits attributable to the fellow shall be used by the institution to improve the program of vocational education in that institution. (Implements Sec. 172(c)(2)(B); 20 U.S.C. 2402.)	
		Sec. 105.440	Institutional eligibility and approval. The Commissioner will approve the vocational education fellowship program of an institution of higher education only upon finding that: (a) The program is capable of enabling unemployed certified teachers or persons from business, industry, or agriculture to become certified vocational education teachers; (Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402.) (b) The institution offers a program in vocational education which is sufficiently comprehensive to meet, at the undergraduate level, the requirements for certification of the applicant in the State where the institution is located; (c) In the case of applicants seeking certification in a particular area of study designated by the Commissioner as being in need of additional personnel, the institution is	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			capable of preparing students for certification in that particular area: (Implements Sec. 172(c)(7); 20 U.S.C. 2402.) (d) The fellow will receive education and training of the same type as that offered by the institution to undergraduate students preparing to become vocational education teachers; and (e) The undergraduate program in vocational education includes adequate support services and disciplines, such as education administration, guidance and counseling, special education for the handicapped, research, and curriculum development. (Implements Sec. 172(c)(3); 20 U.S.C. 2402.)	
		Sec. 105.441	Teaching fields in need of additional teachers. The Commissioner will publish, before the beginning of each fiscal year, a listing of the areas of teaching in vocational education where there are or will be shortages of personnel and will, to the maximum degree possible, award fellowships under Sec. 105.432 to applicants seeking to become teachers in the areas identified. Sec. 172(c)(7); 20 U.S.C. 2402.)	
		Sec. 105.442	Content of application (a) For certified teachers. Each certified teacher applicant shall provide in his or her	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			application evidence of; (1) Certification of a teacher in an elementary or secondary school or junior or community college or other thirteenth and fourteenth grade program within the ten-year period prior to the current closing date for applications under this program; and (2) Past or current skills and experiences in the vocational field(s) in which there is a need for additional educators and for which he or she seeks training as a vocational educator; and (3) Inability to find employment in his or her field of previous certification. (b) For applicants not certified as teachers. Each applicant who has not been a certified teacher shall provide in his or her application evidence of: (1) The nature of duration of his or her employment in business, agriculture, or industry; and (Interprets Sec. 172(c)(1)(B); 20 U.S.C. 2402.) (2) Having skills and experiences in one of the vocational areas where vocational educators are needed. Sec. 172(c)(1)(B); 20 U.S.C. 2402.) (c) Assurance by the institution. The institution of higher education designated in the application for a fellowship shall provide in that application as assurance that the:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(1) Applicant has been accepted for enrollment in the program of vocational education designated in the application; and the (2) Institution meets the requirements for institutional eligibility set forth in paragraphs (a) through (e) of Sec. 105.440. (Implements Sec. 172(c)(3); 20 U.S.C. 2402.)	
		Sec. 105.443	Technical review criteria. The Commissioner will use the following criteria in reviewing formally transmitted applications. The criteria in 45 CFR 100 a.26(b) do not apply to this program. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criteria. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 50 points to be considered for funding . (a) Academic ability. (Maximum 25 points.) The applicant provides evidence of his or her level of academic achievement and academic ability. This may include: (1) Transcripts of grades earned in secondary school and, where	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			appropriate, college; (2) Results earned on specific skill aptitude tests; and (3) Results of other tests, where appropriate. (b) Vocational skills. (Maximum 35 points.) The applicant provides evidence of his or her performance in a work situation requiring vocational skills. This may include: (1) Letters of recommendations of previous employers or others, as appropriate; (2) Results of National Occupational Competency Testing Institute, where appropriate; (3) Certificates or diplomas, as appropriate; and (4) Work related experience, including teaching, where appropriate. (c) Communication skills. (Maximum 15 points.) The applicant provides evidence of experience in activities requiring oral and written language skills. This may include: (1) Public speaking experience to professional, community, or other groups: (2) Articles published in newspapers, professional or popular journals; and (3) Other written materials such as reports, abstracts, or other materials, where appropriate. (d) Human relations skills. (Maximum 15 points.) The applicant presents evidence of skills in interpersonal relations. This may	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			include experience with: (1) Professional groups; (2) Community groups; (3) Volunteer groups; (4) Work related organizations; (5) Members of minority groups, the disadvantaged, and handicapped persons; and (6) Other groups, as appropriate. (e) National need. (Maximum 10 points.) The applicant describes in writing his or her goals, objectives, and aspirations in vocational education and their relationship to national needs in vocational education with particular reference to the elimination of sex stereotyping and working with the following populations: (1) Disadvantaged persons; (2) Members of minority groups; and (3) Handicapped persons. (H.R. Rept. No. 94-1085, p. 55.) (f) Additional factors. In addition to the criteria listed above, the Commissioner will consider the following factors: (1) Equitable distribution among males and females; (2) Geographical distribution; (3) Membership in minority groups; and (4) The applicant's intention to become certified in a vocational field not traditionally open to persons of the applicant's sex, or to become certified in a	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			new field or one not commonly taught. (Implements Sec. 101(3), 172(b)(4); 20 U.S.C. 2301, 2402; H.R. Rept. No. 94-1085, p. 55.)	20 USC 2301 Sec. 101(3) p. 1

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"SUBPART 3--BILINGUAL VOCATIONAL TRAINING "STATEMENT OF FINDINGS		SUBPART 5--BILINGUAL VOCATIONAL EDUCATION BILINGUAL VOCATIONAL TRAINING PROGRAM	
20 USC 2411	"Sec. 181. The Congress hereby finds that one of the most acute problems in the United States is that which involves millions of citizens, both children and adults, whose efforts to profit from vocational education are severely restricted by their limited English-speaking ability because they came from environments where the dominant language is other than English; that such persons are therefore unable to help to fill the critical need for more and better educated personnel in vital occupational categories; and that such persons are unable to make their maximum contribution to the Nation's economy and must, in fact, suffer the	Sec. 105.601	Purpose. The purpose of the bilingual vocational training program is to prepare persons of limited English-speaking ability to perform adequately in an environment requiring English language skills and to fill the critical need for more and better trained persons in occupational categories vital to both the persons and the economy. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational training programs. (Sec. 181; 20 U.S.C. 2411; Conf. Rept., No. 94-1701, p. 228.)	
	hardships of unemployment or under employment. The Congress further finds that there is a critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate vocational instruction of such language-handicapped persons and to prepare such persons to perform adequately in a work environment requiring English language skills, and a corresponding shortage of	Sec. 105.607	Additional application review factors. In addition to the criteria listed in Sec. 105.606, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications. (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects. (Implements Sec. 181; 20 U.S.C. 2411.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	instructional materials and of instructional methods and techniques suitable for such instruction.	Sec. 105.617	Additional application review factors. In addition to the criteria listed in Sec. 105.616, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications. (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects. (Implements Sec. 181; 20 U.S.C. 2411.)	
		Sec. 105.627	Additional application review factors. In addition to the criteria listed in Sec. 105.626, the Commissioner may utilize factors such as the following in making decisions regarding whether to fund applications. (a) Duplication of effort; (b) Duplication of funding; and (c) Evidence that an applicant has not performed satisfactorily on previous projects. (Implements Sec. 181; 20 U.S.C. 2411.)	
	"GENERAL RESPONSIBILITIES OF THE COMMISSIONER			
Sec.USC 2412	"Sec. 182.(a) The Commissioner and the Secretary of Labor together shall-- "(1) develop and disseminate accurate information on the status of bilingual vocational			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	training in all parts of the United States; "(2) evaluate the impact of such bilingual vocational training on the shortages of well-trained personnel, the unemployment or underemployment of persons with limited English-speaking ability, and the ability of such persons to acquire sufficient job skills and English language skills to contribute fully to the economy of the United States; and			
Report to President & Congress	"(3) report their findings annually to the President and the Congress.			
29 USC 871	"(b) The Commissioner shall consult with the Secretary of Labor with respect to the administration of this part. Regulations and guidelines promulgated by the Commissioner to carry out this part shall be consistent with those promulgated by the Secretary of Labor pursuant to section 301(b) of the Comprehensive Employment and Training Act of 1973 and shall be approved by the Secretary of Labor before issuance.			Comprehensive Employment & Training Act of 1973 p. 357
	"AUTHORIZATION OF APPROPRIATIONS			
20 USC 2413	"Sec. 183. There are authorized to be appropriated $60,000,000 for the fiscal year ending September 30, 1978, $70,000,000 for the fiscal year ending September 30, 1979, $80,000,000			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	for the fiscal year ending September 30, 1980, $90,000,000 for the fiscal year ending September 30, 1981, and $80,000,000 for the fiscal year ending September 30, 1982, to carry out the provisions of sections 184, 186, and 188 of this part, except that 65 per centum of such amounts shall be available only for grants and contracts under section 184, 25 per centum shall be available only for grants and contracts under section 186, and 10 per centum shall be available only for grants and contracts under section 188.			
	"AUTHORIZATION OF GRANTS			
20 USC 2414	"Sec. 184.(a) From the sums made available for grants under this section pursuant to section 183, the Commissioner is authorized to make grants to and enter into contracts with appropriate State agencies, local educational agencies, postsecondary education institutions, private nonprofit vocational training institutions, and to other nonprofit organizations especially created to serve a group whose language as normally used is other than English in supplying training in recognized occupations and in new and emerging occupations, which shall include instruction in the English	Sec. 105.603	Eligible applicants. The following agencies or institutions are eligible for grants or contracts, except item (f) being eligible only for contracts: (a) Local educational agencies; (b) State agencies; (c) Postsecondary educational institutions; (d) Private nonprofit vocational training institutions; and (e) Nonprofit organizations especially created to serve a group whose language as normally used is other than English; and (f) Private for profit agencies and organizations. (Sec. 184; 20 U.S.C. 2414.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	language designed to insure that participants in the training will be assisted to pursue such occupations in environments where English is the language normally used, and to enter into contracts with private for-profit agencies and organizations, to assist them in conducting bilingual vocational training programs for persons of all ages in all communities of the United States which are designed to insure that vocational training programs are available to all individuals who desire and need such bilingual vocational education. "(b) The Commissioner shall pay to each applicant which has an application approved under section 189B an amount equal to the total sums expended by the applicant for the purposes described in section 185 and set forth in that application.	Sec. 105.604	Applications for grants or contracts. (a) An applicant shall submit a copy of the application to the State board at the same time it is submitted to the Office of Education. The State board shall submit its comments to the Office of Education within 30 days after the closing date for applications. (b) An applicant shall provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant. (c) An applicant shall set forth a bilingual vocational training program of such size, scope, and design as will make a substantial contribution toward carrying out the purposes described in Sec. 105-601. (d) An applicant shall provide an assurance that the program will include instruction in the English language and in the trainee's dominant language in order to insure that participants in the training will be assisted to pursue occupations in work environments where English is the language normally used. (e) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			A request for funding by an applicant who has had a prior award(s) shall include an evaluation of the previous project and will be reviewed competitively with new applications. (Sec. 184; 20 U.S.C. 2414; Sec. 189A(b); 20 U.S.C. 2420.)	20 USC 2420 Sec.189A(b) p. 225
	"USE OF FEDERAL FUNDS			
20 USC 2415 29 USC 821	"Sec. 185. Grants and contracts under section 184 may be used, in accordance with applications approved under section 189B, for-- "(1) bilingual vocational training programs for persons who have completed or left elementary or secondary school and who are available for education by a postsecondary educational institution; "(2) bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and "(3) training allowances for participants in bilingual vocational training programs subject to the same conditions and limitations as are set forth in section 111 of the Comprehensive Employment and Training Act of 1973.	Sec. 105.602	Eligible programs. Sixty-five percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of operating programs designed to carry out the purposes set forth in Sec. 105.601 in an amount equal to the total sum expended by the applicant for the purposes set forth in the application. No cost sharing is required. These programs include: (a) Bilingual vocational training programs for persons who have completed or left elementary or secondary school. Programs for secondary school students are not eligible; (b) Bilingual vocational training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-around employment, adjust to changing employment needs, expand their range of skills, or advance in employment.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			Training allowances for participants in bilingual vocational training programs described in paragraphs (a) and (b) of this section are an allowable cost. Allowances are subject to the same conditions and limitations as set forth in the Department of Labor Regulations 29 CFR 95.34. Applicants may waive training allowances in accordance with the waiver procedure in 29 CFR 95.34(j). (Sec. 185; 20 U.S.C. 2415.)	
	"AUTHORIZATION OF GRANTS FOR INSTRUCTOR TRAINING PROGRAMS		BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM	
20 USC 2416	"Sec. 186.(a) From the sums made available for grants and contracts under this section pursuant to section 183, the Commissioner is authorized to make grants to and enter into contracts with States, or educational institutions, either public or private, to assist them in conducting training for instructors of bilingual vocational training programs, and whenever the Commissioner determines that it will contribute to carrying out the purposes of this part, to make grants to, and enter into contracts with, States or educational institutions either public or private, to assist them in conducting training for instructors in	Sec. 105.611	Purpose. The purpose of the bilingual vocational instructor training program is to provide training programs to meet the critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate instruction of persons handicapped by their limited English-speaking ability. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational instructor training programs. (Sec. 186; 20 U.S.C. 2416.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	bilingual vocational education programs. "(b) The Commissioner shall pay to each applicant which has an application approved under section 189B an amount equal to the total sums expended by the applicant for the purposes described in seciton 187 and set forth in that application.	Sec. 105.612	Eligible programs Twenty-five percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of conducting training for instructors of bilingual vocational training programs in an amount equal to the total sum expended by the applicant for the purposes set forth in that application. No cost sharing is required. These programs include: (a) Pre-service training programs designed to prepare persons to participate in bilingual vocational training or bilingual vocational education as: (1) Instructors; (2) Aides; and (3) Ancillary personnel such as guidance personnel and counselors. (b) In-service and developmental programs designed to enable instructional and ancillary personnel to continue to improve their qualifications while participating in bilingual vocational training programs; fellowships or traineeships for persons engaged in activities described in (a) and (b) are an allowable cost. A fellowship is an award to an individual student made by a granting agency of the Department. A traineeship is an award to an institution for student support (stipends or allowances) and for institutional support	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(either in a predetermined amount or based on actual costs). (Sec. 186; Sec. 187; 20 U.S.C. 2416; U.S.C. 2417.)	20 USC 2417 Sec. 187 p. 221
		Sec. 105.613	Eligible applicants. The following categories of agencies or institutions are eligible for grants or contracts, except item (c) being eligible only for contracts: (a) State agencies; (b) Public and private nonprofit educational institutions; and (c) Private for-profit educational institutions. (Sec. 186; 20 U.S.C. 2416.)	
	"USE OF FEDERAL FUNDS			
20 USC 2417	"Sec. 187. Grants and contracts under section 186 may be used, in accordance with applications approved under section 189B, for-- "(1) providing preservice training designed to prepare persons to participate in bilingual vocational training or vocational education programs as instructors, aides, or other ancillary personnel such as counselors, and inservice and development programs designed to enable such personnel to continue to improve their qualifications while participating in such programs; and "(2) fellowships or traineeships for persons engaged in such preservice or inservice training.			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"AUTHORIZATION OF GRANTS FOR DEVELOPMENT OF INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES		BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM	
20 USC 2418	"Sec. 188.(a) From the sums made available for grants and contracts under this section pursuant to section 183, the Commissioner is authorized to make grants and enter into contracts with States, public and private educational institutions, and to other appropriate nonprofit organizations, and to enter into contracts with private for-profit individuals and organizations, to assist them in developing instructional material, methods, or techniques for bilingual vocational training. "(b) The Commissioner shall pay to each applicant which has an application approved under section 189B an amount equal to the total sums expended by the applicant for the purposes described in section 187 and set forth in that application.	Sec. 105.621	Purpose. The purpose of the bilingual vocational instructional materials, methods, and techniques program is to develop instructional materials and encourage research programs and demonstration projects to meet the critical shortage of such instructional materials suitable for bilingual vocational training programs. Funds available to the Commissioner pursuant to section 183 of the Act may be used for making grants or contracts for bilingual vocational instructional materials, methods, and techniques. (Sec. 188; 20 U.S.C. 2418.)	
		Sec. 105.623	Eligible applicants. The following categories of agencies or institutions are eligible for grants or contracts, except items (e) and (f) being eligible only for contracts: (a) State agencies; (b) Public educational institutions; (c) Private educational institutions; (d) Nonprofit organizations; (e) Private for-profit organizations; and (f) Individuals. (Sec. 188; 20 U.S.C. 2418.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"USE OF FEDERAL FUNDS			
20 USC 2419	"Sec. 189. Grants and contracts under section 188 may be used, in accordance with applications approved under section 189B, for-- "(1) research in bilingual vocational training; "(2) training programs designed to familiarize State agencies and training institutions with research findings and successful pilot and demonstration projects in bilingual vocational training; "(3) experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and "(4) other demonstration and dissemination projects.	Sec. 105.622	Eligible programs. Ten percent of the funds available under section 183 of the Act may be used by the Commissioner to award grants or contracts for the cost of developing and testing instructional materials, methods, or techniques for bilingual vocational training in an amount equal to the total sum expended by the application for the purposes set forth in that application. No cost sharing is required. These programs include: (a) Research in bilingual vocational training; (b) Development of instructional materials; (c) Training programs designed to familiarize State agencies and training institutions with research findings, and successful pilot and demonstration projects in bilingual vocational training; (d) Experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and (e) Other demonstration and dissemination projects in bilingual vocational training. (Sec. 189; 20 U.S.C. 2419.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"APPLICATIONS			
20 USC 2420	"Sec. 189A. (a) A grant or contract for assistance under this part may be made only upon application to the Commissioner at such time, in such manner, and containing or accompanied by such information as the Commissioner deems necessary. Each such application shall-- "(1) provide that the activities and services for which assistance under this part is sought will be administered by or under supervision of the applicant; "(2)(A) in the case of assistance under section 184, set forth a program for carrying out the purposes described in section 185; "(B) in the case of assistance under section 186, set forth a program for carrying out the purposes described in section 187, and "(C) in the case of assistance under section 188, set forth a program for carrying out the purposes described in section 189; "(3) in the case of assistance under section	Sec.105.605	Review of applications. (a) The Commissioner may approve an application for assistance under the bilingual vocational training program only if the application: (1) Meets the requirements set forth in Sec. 105.604; (2) Is consistent with the criteria set forth in Sec. 105.606; and (3) Is submitted to the Commissioner at the time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the Federal Register. (b) Prior to making awards in a State, the Commissioner will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for training within the State. (Sec. 189A, 189B(a) (3); 20 U.S.C. 2420, 2421.)	20 USC 2421 Sec.189B(a)(3) p. 240
	184, set forth a program of such size, scope, and design as will make a substantial contribution toward carrying out the	Sec.105.606	Technical review criteria. The Commissioner will use the following criteria in reviewing formally transmitted applications.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	purposes of this part; "(4) in the case of assistance under section 186-- "(A) describe the capabilities of the applicant institution, including a listing of the vocational training or vocational education courses offered by that institution, together with appropriate accreditation by regional or national associations, if any, and approval by appropriate State agencies of the course offered, "(B) set forth the qualifications of the principal staff who will be responsible for the training program, and "(C) contain a statement of the minimum qualifications of the persons to be enrolled in the training program, a description of the selection process for such persons, and the amounts of the fellowships or traineeships, if any, to be granted to persons so enrolled; and "(5) in the case of assistance under section 188, set forth the qualifications of the staff who will be responsible for the program for which assistance is sought. "(b) No grant or contract may be made under section 184 directly to a local educational		These criteria are consistent with 45 CFR 100a.26, Review of Applications in the Office of Education, General Provisions for Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points and the maximum weight for each criterion is listed below. An application must receive a minimum of 30 points to be considered for funding. (a) Need. (Maximum 10 points.) (1) Describes the need for the proposed bilingual vocational training; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes, where appropriate, ongoing and planned activities in the community relative to the need. (b) Objectives. (Maximum 10 points.) (1) Are significant and meet clearly identified needs in bilingual vocational training; (2) Clearly describe the proposed project outcomes; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	agency or a postsecondary educational institution or a private vocational training institution or any other eligible agency or organization unles that agency, institution, or organization has submitted the application to the State board established under section 104 of this Act, or in the case of a State that does not have such a board, the similar State agency, for comment and includes the comment of that board or agency with the application.		(3) Are capable of being measured and attained. (c) Plan. (Maximum 15 points.) The plan clearly describes the way in which the objectives will be accomplished by: (1) The overall design for the proposed project; and (2) The specific procedures of each segment of the design. Normally the plan will include a description of: (i) Proposed trainees; (ii) Recruiting procedures to be used; (iii) Training program including a description of both the bilingual vocational training and the language instruction which is designed to assure that trainees will acquire sufficient competency in English to work in environments where English is the language normally used; (iv) Support services to be offered to trainees; (v) Instructional materials to be used in the proposed program; (vi) Anticipated level of skill of the trainees at the end of the proposed training; (vii) Activities to be used in aiding trainees to secure employment, if appropriate; and (viii) Tests to be used in the proposed program components. (d) Management plan. (Maximum 8 points.) The management plan adequately describes the way in	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			which personnel and resources will be used to accomplish each component of the plan developed in criterion (c). (e) Evaluation plan. (Maximum 12 points.) The plan includes valid and reliable procedures for assessing and documenting the bilingual vocational training program and the progress of the trainees. (f) Applicant's staff competencies and experience. (Maximum 25 points.) The application clearly describes: (1) The names and qualifications (including project management qualifications) of the project director, professional staff, consultants, and advisory groups; (2) Time commitments planned for the project director, staff, advisory groups, and any consultants; (3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and (4) Staff competencies that are essential for the proposed project including proficiency in the language of the trainees. (g) Budget and cost effectiveness. (Maximum 10 points.) (1) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			proposed budget and is cost effective; (2) The application includes information concerning the average cost per trainee. (b) Institutional capability and commitment. (Maximum 10 points.) The application provides adequate evidence of: (1) Institutional experience and commitment to the proposed work; (2) Appropriate facilities and equipment necessary for the proposed project; and (3) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project. (Implements Sec. 189A; 20 U.S.C. 2420.)	
		Sec. 105.614	Applications for grants or contracts. (a) An applicant shall provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant. (b) An applicant shall set forth in the application a bilingual vocational instructor training program of a type described in Sec. 165.612; (c) An applicant shall describe in the application the capabilities of the applicant institution in terms of:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(1) A listing of the vocational training or vocational education courses offered by that institution; (2) Appropriate accreditation by regional or national associations, if any; (3) Approval by appropriate State agencies of the courses offered; and (4) Qualifications of the principal staff who will be responsible for the training program. (d) An application shall describe clearly (and in detail) in the application the trainees in terms of the: (1) Minimum qualifications of the persons to be enrolled in the training program; (2) Selection process of the trainees; and (3) Amounts of fellowships or traineeships, if any, to be granted to the persons enrolled. (e) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application. A request for funding by an applicant who has had a prior award(s) shall include an evaluation of the previous project and will be reviewed competitively with new applications. (Sec. 189A; 20 U.S.C. 2420.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
		Sec. 105.615	Review of applications. (a) The Commissioner may approve an application for assistance under the bilingual vocational instructor training program only if the application: (1) Meets the requirements set forth in Sec. 105.614; (2) Is consistent with the criteria set forth in Sec. 105.616; (3) Is submitted to the Commissioner at the time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER. (4) The applicant institution actually has an ongoing vocational training program in the field in which persons are being trained; and (5) The applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training program for which persons are being trained. (b) Prior to making awards in a State, the Commissioner will, where feasible, consult with the State board to achieve equitable distribution of assistance among populations of persons of limited English-speaking ability with the most acute need for	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			training within the State. (Secs. 189A, 189B(a)(3); 20 U.S.C. 2420, 2421.)	20 USC 2421 Sec. 189(B)(a)(3). p. 240
		Sec. 105.616	Technical review criteria. The Commissioner will use the following criteria in reviewing formally transmitted applications. These criteria are consistent with 45 CFR 100.26, Review of Applications in the Office of Education, General Provisions for Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum of 30 points to be considered for funding. (a) Need. (Maximum 10 points) The need section clearly: (1) Describes the need for the proposed instructor training; (2) Provides specific evidence of the need; (3) Indicates specifically how the need will be met; and (4) Describes where appropriate, on going and planned activities in the community relative to the need. (b) Objectives. (Maximum 10 points) The objectives are related to	

the problem and: (1) Are significant for pre-service or in-service training; (2) Clearly describe the proposed training program; and (3) Are capable of being measured and attained.

(c) Plan. (Maximum 10 points.) The plan clearly describes the way in which the objectives will be accomplished by the: (1) Overall design for the proposed project; (2) Specific procedures of each segment of the design in terms of accomplishing the objectives; (3) Normally the plan will include:

(i) Description of the training program, including all program components;

(ii) Description of the minimum qualifications of the persons to be enrolled in the training program;

(iii) Description of the selection process and the amounts of the fellowships or traineeships, if any, to be granted to persons enrolled in the program;

(iv) Evidence that the applicant institution actually has an ongoing vocational training or vocational education program in the field for which persons are to be trained, including a listing of the vocational courses offered by the institution;

(v) Evidence that the applicant institution can provide instructors with

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			adequate language capabilities in the language other than English to be used in the bilingual job training program for which the persons are being trained; and (vi) Evidence that a need exists for instructors who will receive training in the proposed project. (d) Management plan. (Maximum 8 points.) The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c). (e) Evaluation plan. (Maximum 12 points) The plan includes rigorous procedures for assessing and documenting the instructor training program including both the vocational component and the language component. (f) Applicant's staff competencies and experience. (Maximum 25 points) The application clearly describes: (1) The names and qualifications (including project management qualifications) of the project director, professional staff, consultants, and advisory groups; (2) Time commitments planned for the project director, key staff, advisory groups, and any consultants; (3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(4) Staff competencies that are essential for the proposed project, including proficiency in English and in the language other than English. (g) Budget and cost effectiveness. (Maximum 10 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective. (h) Institutional capability and commitment. (Maximum 10 points.) The application provides adequate evidence of: (1) Institutional experience and commitment to the proposed work; (2) Appropriate facilities and equipment necessary for the proposed project; (3) Appropriate accreditation of the applicant institution by regional or national associations and approval by appropriate State agencies of the courses offered; and (4) Documented assurance of support from cooperating agencies, institutions, or community groups where applicable for successful implementation of the project. (Implements Sec. 189A; 20 U.S.C. 2420.)	
		Sec. 105.624	Applications for grants or contracts. (a) An applicant shall provide an assurance that the activities	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			and services for which assistance is sought will be administered by or under the supervision of the applicant. (b) An applicant shall set forth in the application a bilingual vocational instructional materials, methods, and techniques program of a type described in Sec. 105.622. (c) An applicant shall set forth in the application the qualifications of the staff who will be responsible for the program for which assistance is sought. (d) An applicant shall submit an amendment, if any, to the application in the same manner as the applicant submitted the original application. A request for funding by an applicant who has had a prior award(s) will be reviewed competitively with new applications. (Sec. 189A; 20 U.S.C. 2420.)	
		Sec. 105.625	Review of applications. The Commissioner may approve an application for assistance under the bilingual vocational instructional materials, methods, and techniques program only if the application: (a) Meets the requirements set forth in Sec. 105.624; (b) Is consistent with the criteria set forth in 105.626; and (c) Is submitted to the Commissioner at the	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			time, in the manner and containing the information the Commissioner deems necessary, as set forth in the Notice of Closing Date to be published in the FEDERAL REGISTER. (Sec. 189A; 20 U.S.C. 2420.)	
		Sec. 105.626	Technical review criteria The Commissioner will use the following criteria in reviewing formally transmitted applications. These criteria are consistent with 45 CFR 100a.26, Review of Applications in the General Provisions for Office of Education Programs. A segment or segments of an application should address each criterion. Each criterion is weighted and includes the maximum score that can be given to an application in relation to the criterion. The maximum score for the criteria is 100 points, and the maximum weight for each criterion is listed below. An application must receive a minimum score of 50 points to be considered for funding. (a) Need. (Maximum 20 points.) The need section clearly: (1) Describes the national significance and the need in bilingual vocational training for the proposed project; (2) Provides specific evidence of the need; (3) Indicates specifically who or what will be helped; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(4) Describes the problem rather than the symptoms of the problem. (b) Literature review (Maximum 5 points). The literature review is sufficiently comprehensive to: (1) Establish the basis for the problem; (2) Describe the problem in contrast to the symptoms of the problem; (3) Provide a strong conceptual framework for the proposed objectives and proposed plan, including the general design and specific procedures of the proposed plan, along with the management, evaluation, dissemination, and training procedures (when appropriate); and (4) Describe what has been done previously to alleviate the problem and point out the gaps that will be alleviated by this specific proposed work. (c) Objectives. (Maximum 10 points.) The objectives are related to the problem and: (1) Are significant for bilingual vocational training; (2) Clearly describe proposed project outcomes; (3) Are capable of being attained; and (4) Are measurable. (d) Plan. (Maximum 15 points.) The plan clearly describes: (1) The overall design for the proposed project; and (2) The specific procedures by which each	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			objective will be accomplished. Normally the plan will include: (i) Precise definitions of terms; (ii) Description of the characteristics and number of subjects; (iii) Sampling procedures and control groups; (iv) Instrumentation; and (v) Statistical and analytical procedures. (e) Management plan. (Maximum 10 points). The management plan adequately describes the way in which personnel and resources will be used to accomplish each component of the plan developed in criterion (c). (f) Evaluation plan. (Maximum 10 points.) The plan includes rigorous procedures for assessing and documenting the impact of project results and end products or outcomes in terms of the achievement of project goals and objectives. (g) Results, end products, outcomes, and dissementation. (Maximum 10 points.) The application clearly describes: (1) What will be delivered to the government; (2) The format in which the results, products, or outcomes will be delivered to the government; (3) The way in which results, products, or outcomes will be developed or provided for dissemination purposes to specified user populations; and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(4) The procedures to be used in disseminating the results, and products, or outcomes at the local, State, and/or national levels. (h) Applicant's staff competencies and experience. (Maximum 10 points.) The application clearly describes: (1) The names and qualifications (including project management qualifications) of the project director, key professional staff, advisory groups and consultants; (2) Time commitments planned for the project by the project director, key staff, advisory groups, and consultants; (3) Evidence of past and successful experience of the proposed project director and key staff members in similar or related projects; and (4) The competencies that are required for the proposed project. (i) Budget and cost effectiveness. (Maximum 5 points.) The application provides a justifiable and itemized statement of cost which is substantiated by line items in the proposed budget and appears to be cost effective with respect to proposed results, products, or outcomes. (j) Applicant's capability and commitment. (Maximum 5 points.) The application provides adequate evidence of: (1) Institutional or individual's experience	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			and commitment to the proposed work; (2) Appropriate facilities and equipment; and (3) Documented assurance of support from cooperating agencies, local educational agencies or postsecondary institutions, business, industry, and labor, where applicable for successful implementation of the project. (Implements Sec. 189A; 20 U.S.C. 2420.)	
	"APPLICATION APPROVAL BY THE COMMISSIONER			
20 USC 2421	"Sec. 189B.(a) The Commissioner may approve an application for assistance under this subpart only if-- "(1) the application meets the requirements set forth in subsection (a) of the previous section; "(2) in the case of an application submitted for assistance under section 184 to an agency, institution, or organization other than the State board established under section 104 of this Act, the requirement of subsection (b) of the previous section is met; "(3) in the case of an application submitted for assistance under section 184 or section 186 the Commissioner determines that the program is consistent with criteria established by him, where feasible, after consultation with the State board established under section			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	104 of this Act, for achieving equitable distribution of assistance under this subpart within that State; and "(4) in the case of an application submitted for assistance under section 186 the Commissioner determines that the applicant institution actually has an ongoing vocational training program in the field for which persons are being trained; and that the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the persons are being trained. "(b) An amendment to an application shall, except as the Commissioner may otherwise provide, be subject to approval in the same manner as the original application.			
	"SUBPART 4 -- Emergency Assistance for Remodeling and Renovation of Vocational Education Facilities		Subpart 4 -- Emergency Assistance for Remodeling and Renovating of Vocational Education Facilities.	
	"PURPOSE	Sec. 105.501	Purpose.	
20 USC 2441	"Sec. 191. It is the purpose of this subpart to provide emergency assistance, for a limited period of time, to local educational agencies in urban and rural areas which are unable to provide vocational education designed to meet today's manpower needs due to the		The purpose of this program is to provide emergency assistance to local educational agencies in urban and rural areas which are unable to provide vocational educational education designed to meet today's manpower needs due to the age of their vocational education facilities or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
42 USC 4151	age of their vocational education facilities or the obsolete nature of the equipment used for vocational training, in order to assist such agencies in the modernization of facilities and equipment and the conversion of academic facilities necessary to assure that such facilities will be able to offer vocational education programs which give reasonable promise of employment, including the remodeling and renovation of such facilities to make the facilities comply with the requirements of the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968.		the obsolete nature of the equipment used for vocational training. The purpose is to assist those local educational agencies in the modernization of facilities or equipment and the conversion of academic facilities necessary to assure that the facilities will be able to offer vocational education programs which give reasonable promise of employment. (Sec. 191; 20 U.S.C. 2441.)	
	"AUTHORIZATION OF APPROPRIATIONS			
20 USC 2442	"Sec. 192. There are authorized to be appropriated $25,000,000 for fiscal year 1978, $50,000,000 for fiscal year 1979, $75,000,000 for fiscal year 1980, and $100,000,000 for fiscal year 1981, to carry out the purpose of this subpart.			
	"APPLICATIONS			
20 USC 2443	"Sec. 193. (a) Any local educational agency desiring to receive assistance under this subpart shall submit to the Commissioner, through its State board, an application therefor, which application shall set forth--	Sec. 105.502	Eligible applicants. (a) Any local educational agency in an urban or rural area is an eligible applicant. (Sec. 103(a); 20 U.S.C. 2443.) (b) "Rural area" means an area which is	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(1) a description of the facility to be remodeled or renovated, including the date of construction of such facility and the extent of reconstruction necessary to enable such facility to provide a modern program of vocational education; "(2) a description of the equipment to be replaced or modernized with the assistance of funds made available under this subpart; "(3) a description of the extent to which the modernization or conversion of facilities and equipment, if assisted with funds made available under this subpart, would be consistent with, and further the goals of, the five-year State plan developed pursuant to section 107; "(4) the financial ability of the local educational agency to undertake such modernization without Federal assistance; "(5) assurances that the facility to be remodeled or renovated will meet standards adopted pursuant to the Act of August 12, 1968; "(6) the extent of State and local funds available to match Federal funds made available under this subpart, together with the sources and amounts of such funds; "(7) such other information as the State board determines to be appropriate; and		not included within a Standard Metropolitan Area (as defined by the U.S. Bureau of Census) and which is not within or coterminous with, a city, town, borough, or village, or other subcounty political unit, the population of which exceeds 2,500. (c) "Urban area" means an area within a city, town, or borough with a population of over 100,000. (Implements Sec. 198(a); 20 U.S.C. 2443.)	
		Sec. 105.503	Content of applications. An application for a grant or assistance contract shall set forth: (a) A description of the facility to be remodeled or renovated, including: (1) The date of completion of construction of the facility (or the part of the facility to be remodeled or renovated); (2) The extent of remodeling or renovation necessary to enable the facility to provide a modern program of vocational education; (b) A description of the equipment to be replaced or modernized and reference to the particular purpose for which the equipment will be used; (c) A description of the extent to which the modernization or conversion of facilities and equipment will be consistent with, and further	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(8) such other information as the Commissioner may require by regulation. "(b) In approving applications submitted under this subpart, the Commissioner shall apply only the following criteria: "(1) the need for such assistance, taking into account such factors as-- "(A) the age and obsolescence of the facilities and equipment for which emergency modernization assistance is sought, "(B) the rate of youth unemployment in the labor market area served by the local educational agency, "(C) the number of youth aged seventeen through twenty-one residing in the labor market area served by the local educational agency who are unemployed, and "(D) the percentage such youth represent, as compared with the vocational education enrollment in the local educational agency, "(E) the ability of the facility to comply with the standards adopted pursuant to the Act of August 12, 1968 (42 U.S.C. 4151-4156), commonly known as the Architectural Barriers Act of 1968; and "(2) the degree to which the modernization of facilities and equipment proposed in the application afford promise of achieving the goals set		the goals of, the five-year State plan, including the elimination of sex and racial bias and sex stereotyping in vocational education programs; (d) The financial ability of the local educational agency to undertake the modernization without Federal assistance; (Implements Sec. 193(a) (1)-(4); 20 U.S.C. 2443.) (e) Assurance that the facility to be remodeled or renovated will meet standards adopted pursuant to the Architectural Barriers Act; (Sec. 193(a)(5); 20 U.S.C. 2443; 42 U.S.C. 4151-4156.) (f) The extent of State and local funds available to match Federal funds together with the sources and amounts of the funds; (g) Such other information as the State board determines to be appropriate. (Sec. 193(a)(6), (7); 20 U.S.C. 2443.) (h) The reasons why renovation or remodeling rather than replacement is planned or why some other facility is not available; (i) The cost of each major item of renovation or remodeling; and (j) Facts showing that renovation or remodeling is cost effective. (Implements Sec. 193(a) (8); 20 U.S.C. 2443.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	forth in the five-year State plan developed pursuant to section 107. "(c) The Commissioner shall rank all approved applications according to their relative need for assistance and, except as provided in subsection (d), shall pay, from sums appropriated for this part, 75 per centum of the cost of such approved applications, until such appropriation shall be exhausted.	Sec. 105.504	Submission of applications through the State board. An applicant shall send the application to the Commissioner through the State board. (Sec. 193(a); 20 U.S.C. 2443.)	
		Sec. 105.505	Technical review criteria (a) The Commissioner will rank all applicants according to their relative need for assistance. (Sec. 193(C); 20 U.S.C. 2443.) (b) The relative need for assistance will be determined by the following criteria (total 100 points): (1) The age or obsolescence of the facilities and equipment for which assistance is sought (maximum 17 points); (2) The rate of youth unemployment in the labor market area served by the local educational agency (maximum 12 points); (3) The number of youth aged seventeen through twenty-one residing in the labor market area served by the local educational agency who are unemployed (maximum 12 points); (4) The percentage such youth represent, as compared with the vocational education enrollment in the local educational agency (maximum 12 points); (5) The ability of the facility to comply with the standards adopted pursuant to the Architectural Barriers Act	
42 USC 4151	"(d) The Commissioner shall consult with the Administrator of General Services and the Architectural and Transportation Barriers Compliance Board to determine whether the proposed remodeling or renovation will meet standards adopted pursuant to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968.			
	"(e) Upon a finding, in writing, that a local educational agency with an approved application is suffering from extreme financial need and would not, because of the limitation of Federal financial assistance to 75 per centum of the cost of the approved project, be able to participate in the program authorized by this subpart, the Commissioner may waive such limitation and may pay the full cost of the approved project.			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(maximum 5 points); (Sec. 193(b)(1)(A) through (E); 20 U.S.C. 2443; 42 U.S.C. 4151 through 4156.) (6) The need for the proposed facilities or equipment in relation to the employment needs of the State or labor market area (maximum 12 points); (7) Adequacy of the proposed facilities or equipment for the training or educational requirements of the specific vocational training program(s) to be accommodated by the proposed facilities or equipment (in terms of linedrawings and educational specifications)(maixmum 10 points); (8) Evidence that the proposed renovation or remodeling or equipment is economical and is not elaborate or extravagant (maximum 5 points); (9) Evidence that the planned renovation or remodeling is a more cost effective approach than replacement (maximum 5 points); and	
			(10) Evidence that the local educational agency does not have the financial ability to undertake the proposed project without Federal assistance, and the ability of the State education agency and the local education agency to match proposed Federal funds (maximum 10 points). (Implements Sec. 192(b)(1); 20 U.S.C. 2442.)	20 USC 2442 Sec. 192(b)(1) p. 242

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(c) In approving applications, the Commissioner will consider the degree to which the modernization of facilities and equipment proposed in the application affords promise of achieving the goals set forth in the approved five-year State plan. (Sec. 193(b)(2); 20 U.S.C. 2443.)	
		Sec. 105.506	Payments to local educational agencies. (a) The Commissioner will pay 75 percent (except as noted in paragraph (b)) of the cost of approved applications in the order they are ranked under Sec. 105.505(b). (Sec. 193(c); 20 U.S.C. 2443.) (b) The Commissioner may waive the 75 percent limit and may pay up to the full cost of the project upon the Commissioner's finding, in writing, that a local educational agency with an approved application is suffering from extreme financial need and cannot because of the 75 percent limit, participate in the program. (Sec. 193(e); 20 U.S.C. 2443,) (c) Applications will be funded until the appropriation is exhausted. (d) The Commissioner will reserve from the appropriation for the fiscal year for which the application is made an amount sufficient to pay the entire Federal share	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			of each approved project and will obligate that amount from the appropriation even though the project may not be completed within the fiscal year. (Interprets Sec. 194(a); 20 U.S.C. 2444.)	20 USC 2444 Sec.194(a) p. 249
			(e) The Commissioner will pay approved applicants in advance or by way of reimbursement, or in installments consistent with HEW practices. (Sec. 194(b); 20 U.S.C. 2444.)	20 USC 2444 Sec. 194(b). p. 249
		Sec. 105.507	Construction requirements. The Office of Education's regulations for the Commissioner's direct project grant and contract programs (45 CFR Part 100a shall apply to projects for assistance under this program, particularly the Commissioner's regulations on "Bonding and Insurance" (45 CFT Part 100a, Subpart J, Secs. 100a.120-122) and on "Construction Requirements" (Subpart K, Secs. 100a.155-192), (45 CFR Part 100a). In addition, the non-discrimination provisions in 45 CFR Part 80 apply. This includes 45 CFR 80.3(b)(3) which provides that, in determining the site or location of the facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color,	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			or national origin. (Implements Sec. 193; 20 U.S.C. 2443.)	
	"PAYMENT			
20 USC 2444	"Sec. 194(a) Upon his approval of an application for assistance under this subpart, the Commissioner shall reserve from the appropriation available therefor the amount required for the payment of the Federal share of the cost of such application as determined under subsection (c) or (d) or section 193.			20 USC 2443 Reg. 105.506(d)
	"(b) The Commissioner shall pay to the applicant such reserved amount, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.			20 USC 2443 Reg. 105.506(e)

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"PART C -- DEFINITIONS "DEFINITIONS	Sec. 104.552	Types of facilities. The State may use funds under the basic grant for construction if the facility meets one of the following requirements: (a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market; or (b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or (c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, or (d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading to a baccalaureate degree. These vocational education programs must:	
20 USC 2461	"Sec. 195. As used in this Act -- "(1) The term 'vocational education' means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; and, for purposes of this paragraph, the term 'organized education program' means only (A) instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (B) the acquisition, maintenance, and repair of instructional supplies, teaching aids and equipment; and the term 'vocational education' does not mean the construction, acquisition or initial equipment of buildings, or the acquisition or rental of land. "(2) The term 'area vocational education school' means -- "(A) a specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market, or "(B) the department of a high school exclusively or principally used			

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market, or "(C) a technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, or		(1) Be available to all residents of the State or an area of the State designated and approved by the State board; and (2) In the case of a school, department, or division described in (c) or (d), admit as regular students both persons who have completed high school and persons who have left high school. (Sec. 195(2); 20 U.S.C. 2461.)	
	"(D) the department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields, leading to immediate employment, but not necessarily leading to a baccalaureate degree, if it is available to all residents of the State or an area of the State designated and approved by the State board, and if, in the case of a school, department, or division described in (C) or (D), if it admits as regular students both persons who have completed high school and persons who have left high school. "(3) The term 'school facilities' means classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed. Such term shall not	Sec. 104.592	Industrial arts programs. Industrial arts education programs which may be funded under Sec. 104.591 are those industrial arts programs which are designed to meet the purposes of this Act (including the elimination of sex stereotyping) and which: (a) Pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designating, constructing, evaluating, and using tools, machines, materials, and processes; and (b) Assist individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs. (Sec. 195(15); 20 U.S.C. 2461.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	include any facility intended primarily for events for which admission is to be charged to the general public. "(4) The term 'construction' includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees. "(5) The term 'Commissioner' means the Commissioner of Education. "(6) The term 'Secretary' means the Secretary of Health, Education, and Welfare. "(7) The term 'handicapped', when applied to persons, means persons who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons or persons with specific learning disabilities who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance or who require a modified vocational education program. "(8) The term 'State' includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa,		APPENDIX A DEFINITIONS "Act" means the Vocational Educational Act of 1963, Pub. L. 88-210, as amended by Title II of the Education Amendments of 1976, Pub. L. 94-482, 90 Stat. 2168, 20 U.S.C. 2301 et seq. (Secs. 101-195, 20 U.S.C. 2301 et. seq.) "Administration" means activities of a State or an eligible recipient necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including ancillary services. (Sec. 195(20); 20 U.S.C. 2461.) "Adult program" means (for reporting purposes) vocational education for persons who have already entered the labor market or who are unemployed or who have completed or left high school and who are not described in the definition of "postsecondary program." (Sec. 110(c); 20 U.S.C. 2461.) "Ancillary services" means activities which contribute to the enhancement of quality in vocational education programs, including activities such as teacher training and curriculum development, but excluding administration (except in consumer and	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	Northern Mariana Islands, and the Trust Territory of the Pacific Islands. "(9) The term 'State board' means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education in the State. "(10) The term 'local educational agency' means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. "(11) The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. "(12) The term 'postsecondary educational institution' means a nonprofit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated		homemaking education under Section 150 of the Act.) (Implements Sec. 195(20); 20 U.S.C. 2461.) "Area vocational education school" means: (a) A specialized high school used exclusively or principally for the provision of vocational education to persons who are available for study in preparation for entering the labor market; (b) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to persons who are available for study in preparation for entering the labor market; or (c) A technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market; or (d) The department or division of a junior college or community college or university operating under the policies of the State board which provides vocational education in no less than five different occupational fields, leading to immediate employment but not necessarily leading	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	from or left elementary or secondary school. "(13) The term 'eligible recipient' means a local educational agency or a postsecondary educational institution. "(14) The term 'National Advisory Council' means the National Advisory Council on Vocational Education continued under section 162. "(15) The term 'industrial arts education programs' means those education programs (A), which pertain to the body of related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes and (B) which assist individuals in the making of informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical educational programs). "(16) The term 'disadvantaged' means persons (other than handicapped persons) who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs, under criteria developed by the Commissioner based on objective standards and the		to a baccalaureate degree, if: (1) The vocatioanal programs are available to all residents of the State or an area of the State designated and approved by the State board; and (2) In the case of a school, department, or division described in (c) or (d), it admits as regular students both persons who have completed high school and persons who have left high school. (Sec. 195(2); 20 U.S.C. 2461.) "Bilingual vocational training" means training or retraining in which instruction is presented in both the English language and the dominant language of the persons receiving training and which is conducted as part of a program designed to prepare individuals of limited English-speaking ability for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations, but excluding any program to prepare individuals for employment in occupations which require a baccalaureate or advanced degree; bilingual vocational training includes guidance and counseling (either	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	most recent available data. "(17) The term 'low-income family or individual' means such families or individuals who are determined to be low-income according to the latest available data from the Department of Commerce. "(18) The term 'cooperative education' means a program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program. "(19) The term'curriculum materials' means materials consisting of a series of courses to cover instruction in any occupational field which are designed to prepare persons for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field.		individually or through group instruction) in connection with such training or for purpose of facilitating occupational choices; instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become, instructors in a bilingual vocational training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land. (Implements Sec. 181; 20 U.S.C. 2411) "CETA" means the Comprehensive Employment and Training Act of 1973, Pub. L. 93-23, 87 Stat. 839, as amended. "Commissioner" means the U.S. Commisioner of Education or the Commissioner's designee. (Sec. 195(5); Sec. 421A (a) of GEPA; 20 U.S.C. 2461.) "Construction" includes: (a) Construction of new buildings; (b) Acquisition, expansion remodeling, and alteration of existing buildings;	Comprehensive Employment & Training Act of 1973 p. 357

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
	"(20) The term 'administration' means activities of a State necessary for the proper and efficient performance of its duties under this Act, including supervision, but not including ancillary services."		(c) Site grading and improvement; and (d) Architect fees. (Sec. 195(4); 20 U.S.C. 2461.)	
"Private Vocational Training Institution."	"(21) The term 'private vocational training institution' means a business or trade school, or technical institution or other technical or vocational school, in any State, which (A) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (B) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (C) has been in existence for two years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subsection; and (D) is accredited (i) by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this clause, or (ii) if the Commissioner deter mines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a		"Cooperative education" means a program of vocational education for persons who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program. (Sec. 195(18); 20 U.S.C. 2461.) "Curriculum materials" means materials: (a) Covering instruction in a course or series of courses in any occupational field; and (b) Designed to prepare persons for employment at the entry level; or (c) Designed to upgrade occupational competencies of those previously or presently employed in any occupational field.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
List publication	State agency listed by the Commissioner pursuant to this clause, or (iii) if the Commissioner determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purpose of this paragraph, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State agencies which he determines to be reliable authority as to the quality of education or training afforded."		(Sec. 195(19); 20 U.S.C. 2461.) "Disadvantaged" means: (a) Persons (other than handicapped persons) who: (1) Have academic or economic disadvantages; and (2) Require special services, assistance, or programs in order to enable them to succed in vocational education programs. (Sec. 195(16); 20 U.S.C. 2461.) (b) "Academic disadvantage," for the purposes of this definition of "disadvantaged," means that a person: (1) Lacks reading and writing skills; (2) Lacks mathematical skills; or (3) Performs below grade level. (c) "Economic disadvantage," for the purposes of this definition of "disadvantaged," means: (1) Family income is at or below national poverty level; (2) Participant or parent(s) or guardian of the participant is unemployed; (3) Participant or parent of participant is recipient of public assistance; or (4) Participant is institutionalized or under State guardianship. (Interprets Sec. 195(16); 20 U.S.C. 2461.) "Eligible recipient" means:	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(a) A local educational agency, or (b) A postsecondary educational institution. (Sec. 195(13); 20 U.S.C. 2461.)	
			"Financial ability," as used in section 106(a)(5)(B)(i) of the Act means the property wealth per capita of local school districts and of other public agencies having a tax base or the total tax effort of the area served by these schools and agencies as that effort is a percentage of the income per capita of those within the taxing body. (Implements Sec. 106(a)(5)(B)(i); 20 U.S.C.2306, H. Rept. No. 94-1085, p. 34.)	20 USC 2306 Sec. 106(a)(5)(B)(i). p. 40
			"Handicapped" means: (a) A person who is: (1) Mentally retarded; (2) Hard of hearing; (3) Deaf; (4) Speech impaired; (5) Visually handicapped; (6) Seriously emotionally disturbed; (7) Orthopedically impaired; or (8) Other health impaired person, or persons with specific learning disabilities; and (b) Who, by reason of the above: (1) Requires special education and related services, and (2) Cannot succeed in the regular vocational	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			education program without special educational assistance; or (3) Requires a modified vocational education program. (Sec. 195(7); Sec. 602(1) of the Education of Handicapped Act; 20 U.S.C. 2461; 20 U.S.C. 4001.)	Education of the Handicapped Act. p. 307
			"HEW" means Department of Health, Education, and Welfare. (42 U.S.C. 3501.)	
			"High School program" means vocational education for persons in grades 9 through 12. (Implements Sec. 101; 20 U.S.C. 2461.)	
			"Industrial arts education programs" means those education programs: (a) Which pertain to the body or related subject matter, or related courses, organized for the development of understanding about all aspects of industry and technology, including learning experiences involving activities such as experimenting, designing, constructing, evaluating, and using tools, machines, materials, and processes; and (b) Which assist Individuals in making informed and meaningful occupational choices or which prepare them for entry into advanced trade and industrial or technical education programs. (Sec. 195(15); 20 U.S.C. 2461.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			"Institution of higher education" means institution of higher education as defined in section 1201(a) of the Higher Education Act. (Sec. 1201(a) of the Higher Education Act, 20 U.S.C. 1141(a).) "Limited English-speaking ability" when used in reference to an individual means: (a) Individuals who were not born in the United States or whose native tongue is a language other than English, and (b) Individuals who came from environments where a language other than English is dominant, and by reason thereof, have difficulties speaking and understanding instruction in the English language. (20 U.S.C. 880b-1.) "Local educational agency" means: (a) A board of education (or other legally constituted local school authority) having administrative control and direction of public elementary or secondary schools in a city, counry, township, school district, or political subdivision of a State; or (b) Any other public educational institution or agency having administrative control and direction of a vocational educational program. (Sec. 105(10); 20 U.S.C. 2461.) "Low-income family or individual" means	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			families or individuals who are determined to be low-income according to the latest available data from the Department of Commerce. (Sec. 195(17); 20 U.S.C. 2461.)	
			National Advisory Council" (NACVE) means the previously existing National Advisory Council on Vocational Education which is continued by section 162 of the Act. (Sec. 195 (14); 20 U.S.C. 2461.)	
			"Postsecondary educational institution" means a non profit institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older, who have graduated from or left elementary or secondary school. (Sec. 195(12); 20 U.S.C. 2461.)	
			"Postsecondary program" means (for reporting purposes) vocational education for persons who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs. (Sec. 110 (c); 20 U.S.C.	20 USC 2310 Sec.110(c) p. 81
			"Private vocational training institution" means a business or trade school, or technical institution, or other technical or vocational	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			school, in any State, which (a) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (b) is legally authorized to provide, and provides within that State, a program of post-secondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (c) has been in existence for two years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subsection; and (d) is accredited (1) by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this clause, or (2) if the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Commissioner pursuant to this clause, or (3) if the Commissioner determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by him and composed of persons specially qualified to evaluate training provided	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purpose of this paragraph, the Commissioner shall publish a list of nationally recognized accrediting agencies or associations and State agencies which he determines to be reliable authority as to the quality of education or training afforded." (Pub. L. 95-40; 20 U.S.C. 2461(21).)	
			"School facilities" means: (a) Classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed. (b) "School facilities" does not include any facility intended primarily for events for which admission is to be charged to the general public. (Sec. 195(3); 20 U.S.C. 2461.)	
			"Secondary program" means vocational education for persons in secondary grades as defined by State law. (Implements Sec. 101; 20 U.S.C. 2301.)	20 USC 2301 Sec. 101 p. 2
			"Secretary" means the Secretary of Health, Education, and Welfare.	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			(Sec. 195(6); 20 U.S.C. 2461.) "State" includes: (a) The 50 States; (b) The District of Columbia; (c) The Commonwealth of Puerto Rico; (d) The Virgin Islands' (e) Guam; (f) American Samoa; and (g) The Trust Territory of the Pacific Islands. (Sec. 195(8); 20 U.S.C. 2461.) "State board" means the State board designated or created by State law as the sole State agency responsible for: (a) The administration of vocational education; or (b) Supervision of the administration of vocational education in the State. (Sec. 195(9); 20 U.S.C. 2461.) "State Educational agency" (SEA) means: (a) The State board of education; or (b) Other agency or office primarily responsible for the State supervision of public elementary and secondary schools; or (c) If there is no such office or agency, an office or agency designated by the Governor or by State law. (Sec. 195(11); 20 U.S.C. 2461.)	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree; for purposes of this paragraph, the term "organized education program" means only: (a) Instruction related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training; and (b) the acquisition, maintenance and repair of instructional supplies, teaching aids and equipment. The term "vocational education" does not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land. (Sec. 195(1); 20 U.S.C. 2461.) "Vocational instruction" means instruction which is designed to prepare individuals upon its completion for employment in a specific occupation or cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or	

CITATION	LEGISLATION	CITATION	RULES AND REGULATIONS	SEE ALSO
			occupations. Such instruction may include: (a) Classroom instruction; (b) Classroom related field, shop, and laboratory work; (c) Programs providing occupational work experiences and related instructional aspects of apprenticeship programs; (d) Remedial programs which are designed to enable individuals to profit from instruction related to the occupation or occupations for which they are being trained by correcting whatever educational deficiencies or handicaps prevent them from benefiting from such instruction; and (e) Activities of vocational student organizations which are an integral part of the vocational instruction, subject to the provisions in Sec. 104.513.	
			(Implements Sec. 120(b) (1)(A); 195(1); 20 U.S.C. 2330, 2461.)	20 USC 2330 Sec. 120(b) (b)(1)(A). p. 102

CITATION	LEGISLATION
	GENERAL EDUCATION PROVISIONS ACT (Sections Applicable to Vocational Education Programs) PART B -- APPROPRIATIONS AND EVALUATIONS SUBPART I -- APPROPRIATIONS AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS
20 USC 1225 Sec. 412	Sec. 412.(a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year. (b) Notwithstanding any other provison of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year, ending prior to October 1, 1978, which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year. (c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 3679(d)(2) of the Revised Statutes and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding. (20 U.S.C. 1225) Enacted Jan. 2, 1968, P.L.90-247, Title I, sec. 405, 81 Stat. 815; amended April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(5), (7), (8), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, redesignated and amended August 21, 1974, P.L. 93-380, sec. 506(a)(1), 88 Stat. 562, 563; amended April 21, 1976, P.L. 94-273, sec. 3(12), 90 Stat. 376.
	RULES AND REGULATIONS
Sec.100a.55	Obligation by recipients. Obligations will be considered to have been incurred by a recipient on the basis of documentary evidence of binding commitments for the acquisition of goods or property or for the performance of work, except that funds for personal services, for services performed by public utilities, for travel, and for the rental of facilities, shall be considered to have been obligated as of the

CITATION	RULES AND REGULATIONS
	time such services were rendered, such travel was performed, and such rented facilities were used, respectively. (20 U.S.C. 1232c(b)(2); 31 U.S.C. 200.)
Sec.100b.55	Obligation by recipients. (a) Period for obligation.--Except as otherwise provided by statute, Federal funds made available for a fiscal year shall remain available for obligation in accordance with paragraph (c) of this section during that fiscal year. Federal funds for construction of school facilities shall remain available for obligation for that purpose for a reasonable period of time as determined by the Commissioner. (b) Carryovers.--In accordance with section 414(b) (20 U.S.C. 1225(b)) of the General Education Provisions Act (P.L. 90-247, title IV, as amended), any Federal funds made available, which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which they were made available, shall remain available for obligation and expenditure by the recipient during such succeeding fiscal year. (c) Determinations of obligation.--For the purpose of this section, an obligation of funds will be considered to have been incurred by a recipient on the basis of documentary evidence of binding commitments for the acquisition of goods or property, for the construction of facilities, or for the performance of work. However, the obligation of funds for personal services, for services performed by public utilities, for travel, and for the rental of equipment and facilities shall be considered to have been obligated as of the time such services were rendered, such travel was performed, and such rented equipment and facilities were used, respectively. (20 U.S.C. 1232c(b)(1).)
	LEGISLATION
	REVIEW OF APPLICATIONS
20 USC 1231b.2 Sec. 425	Sec. 425.(a) In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law; rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or program in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, or (3) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request,

the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines, governing such applicable program it shall rescind such final action.

(b) Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under such subsection (a) may appeal such action to the Commissioner. An appeal under this subsection may be taken only if notice of such appeal is filed with the Commissioner within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If, on such appeal, the Commissioner determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Commissioner may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Commissioner under subsection (b), the Commissioner shall forthwith terminate all assistance to the State educational agency under the applicable program affected.

(20 U.S.C. 1231b-2) Enacted August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 566.

TECHNICAL ASSISTANCE

20 USC 1231c Sec. 426

Sec. 426.(a) For the purpose of carrying out more effectively Federal education programs, the Commissioner is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, instituitons of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools--

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) The Commissioner shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) The Commissioner's annual report shall contain a statement of the Commissioner's activities under this section.

(20 U.S.C. 1231c) Enacted April 13, 1970, P.L. 91-230, Title IV sec. 401(a)(10), 84 Stat. 167; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565.

USE OF FUNDS WITHHELD FOR FAILURE TO COMPLY WITH OTHER PROVISIONS OF FEDERAL LAW

20 USC
1231e
Sec. 428

Sec. 428. At any time that the Commissioner establishes an entitlement, or makes an allotment or reallotment to any State, under any applicable program, he shall reduce such entitlement, allotment, or reallotment by such amount as he determines it would have been reduced, had the data on which the entitlement, allotment, or reallotment is based excluded all data relating to local educational agencies of the State which on the date of the Commissioner's action are ineligible to receive the Federal finacial assistance involved because of a failure to comply with title VI of the Civil Rights Act of 1964. Any appropriated funds which will not be paid to a State as a result of the preceding sentence may be used by the Commissioner for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964.

(20 U.S.C. 1231e) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565.

SUBPART 2 -- ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

20 USC
1232a
Sec. 432

Sec. 432. No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction,

CITATION	LEGISLATION
	administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance. (20 U.S.C. 1232a) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 717(b), 86 Stat. 369; amended October 12, 1976, P.L. 94-482, Title IV, sec. 404(b), 90 Stat. 2230.
	LABOR STANDARDS
20 USC 1232b Sec. 433	Sec. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth n Reorganization Plan Numbered 14 of 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c). (20 U.S.C. 1232b) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326.
	ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS
20 USC 1232c Sec. 434	Sec. 434.(a)(1) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement entered into (other than by formal advertising) shall keep such records as the Assistant Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such funds are given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. (2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five years after the completion of the project or undertaking to which reference is made in paragraph (1), have access, for the purpose of audit and examination, to any books, documents, papers, and records of such recipients which, in the opinion of the Comptroller General, after

consultation with the Assistant Secretary, may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in paragraph (1).

(c) Whenever the Commissioner, after reasonable notice and an opportunity for hearing, finds that there has been a failure, by any recipient of funds under any applicable program, to comply substantially with the terms to which such recipient has agreed in order to receive such funds, the Commissioner shall notify such recipient that further payments will not be made to such recipient under that program until he is satisfied that such recipient no longer fails to comply with such terms. Until the Commissioner is so satisfied, no further payments shall be made to such recipient. Pending the outcome of any termination proceeding initiated under this paragraph, the Commissioner may suspend payments to such recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken.

(d)(1) If any State has submitted an application for funds under any applicable program under which appropriations for such program are, by the applicable statute, allotted or apportioned among the States or under which the State (or local educational agencies in that State) is entitled to a portion of an appropriation therefor and the Commissioner disapproves such application, or if the Commissioner withholds payments to a State under paragraph (1) of subsection (c), that State shall be entitled to judicial review of the actions of the Commissioner in accordance with the provisions of this paragraph.

(2)(A) If any State, under circumstances qualifying for judicial review under this paragraph, desires judicial review of the Commission's action, such State may, within sixty days of such action, file with the United States Court of Appeals for the circuit in which such State is located a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based the action brought under this division, as provided in section 2112 of title 28, United States Code.

(B) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(C) The court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

CITATION | LEGISLATION

(e) For the purposes of this section, the term "application" includes--

(1) an application for a grant;
(2) an offer to make a contract;
(3) a State plan for the administration of an applicable program;
(4) State assurances with respect to the administration of such a program; and
(5) any other methods for seeking Federal funds from the Commissioner of Education;

under which an agency, institution, organization, or other organized entity may become the recipient of Federal funds.

(20 U.S.C. 1232c) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 169, renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; subsection (b) added June 23, 1972, P.L. 92-318, sec. 501, 86 Stat. 345; amended August 21, 1974, P.L. 93-380, sec. 510, 88 Stat. 568, 571; amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(f)(1), 90 Stat. 2237.

RULES AND REGULATIONS

SUBPART B -- APPLICATIONS

Sec.100a.15 Applications for grants or contracts.

Any applicant eligible for a grant or contract may submit, on or before such cutoff date or dates as the Commissioner may announce in the FEDERAL REGISTER for each fiscal year, an application containing such assurances and pertinent information, and in accordance with such forms, and instructions as the Commissioner may prescribe. Such applications shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application.

(20 U.S.C. 1221c(b)(1); OMB Circular A-102.)

Sec.100a.16 Project description.

The application shall describe: (a) The nature, duration, purpose, and plan of the proposed project; (b) the qualifications of the project director and of the professional personnel who will be involved in the project; (c) the facilities and resources that will be made available; (d) a justification of the amount of Federal funds requested; (e) the portion of the cost of the project proposed to be contributed by the applicant; (f) a proposed budget; and (g) such other information and assurances as the Commissioner may require.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A-102.)

Sec.100a.17 Administrative information.

The application shall contain the name of the official authorized to submit the application and the name of the individual or official who will be responsible for carrying out the project. Unless otherwise indicated in the application,

CITATION	RULES AND REGULATIONS
	the former individual or official will be deemed to be the individual or official to whom communications shall be directed, the individual or official who shall be responsible for the receipt, custody, and disbursement of Federal funds, and the individual or official who shall have ultimate responsibility for the accounting of such Federal funds. (20 U.S.C. 1221c(b)(1); OMB Circular No. A-102.)
Sec.100a.18	Designation and certification of agency to administer the project. (a) Each project application and amendment thereto shall give the official name of the applicant, which shall be the agency responsible for carrying out the project. (b) Each project application and amendment shall include an assurance by the applicant to the effect that the application or amendment has been adopted by the applicant. (OMB Circular No. A-102.)
Sec.100a.19	Cooperative arrangements. (a) Eligible parties may enter into cooperative arrangements with othe eligible parties, including those in another State, to apply for assistance. (b) A joint application made by two or more applicants under a particular Federal program may have separate budgets corresponding to the programs, services, and activities performed by each of the joint applicants, or may have a combined budget. If joint applications present separate budgets, the Commissioner may make separate awards, or may award separate amounts for each of the joint applicants. (c) In the case of each cooperative arrangement authorized under paragraph (a) of this section and receiving assistance, except where the Commissioner makes separate awards under paragraph (b) of this section, all such applicants (1) shall be deemed to be joint legal recipients of the grant or contract and (2) shall be jointly and severally legally responsible for administering the project assisted under such grant or contract. (20 U.S.C. 1221c(b)(1), 1232c(b)(1).)
Sec.100a.20	Effective date of approved project. Federal financial participation is available only with respect to obligations incurred subsequent to the effective date of an approved project. The effective date of the project will be set forth in the notification of grant award or contract document. (20 U.S.C. 1221c(b)(1); OMB Circulars A-21, A-87.)
Sec.100a.26	Review of applications. (a) The Commissioner, prior to disposition of applications for grants or contracts, shall have discretion to obtain the review of a panel of experts (except where review by such a panel is required by statute). Any such review will be in addition to the review of an application by the Commissioner in

accordance with such procedures as he may establish.

(b) Review by the Commissioner and by the panel of experts will take into account the following factors (in addition to such other criteria as may be prescribed by statute or regulation):

(1) The need for the proposed activity in the area served or to be served by the applicant;

(2) Relevance to priority areas of concern as reflected in provisions contained in the applicable Federal statutes and regulations;

(3) Adequacy of qualifications and experience of personnel designated to carry out the proposed project;

(4) Adequacy of facilities and other resources;

(5) Reasonableness of estimated cost in relation to anticipated results;

(6) Expected potential for utilizing the results of the proposed project in other projects or programs for similar educational purposes;

(7) Sufficiency of size, scope, and duration of the project so as to secure productive results; and

(8) Soundness of the proposed plan of operation, including consideration of the extent to which:

(i) The objectives of the proposed project are sharply defined, clearly stated, capable of being attained by the proposed procedures, and capable of being measured;

(ii) Provision is made for adequate evaluation of the effectiveness of the project and for determining the extent to which the objectives are accomplished;

(iii) Where appropriate, provision is made for satisfactory inservice training connected with project services; and

(iv) Provision is made for disseminating the results of the project and for making materials, techniques, and other outputs resulting therefrom available to the general public and specifically to those concerned with the area of education with which the project is itself concerned.

(20 U.S.C. 1221c(b)(1).)

Sec.100a.27 Disposition of applications.

(a) On the basis of the review of an application pursuant to Sec. 100a.26, the Commissioner will either (1) select the application for funding in whole or in part, for such amount of funds and subject to such conditions as he may deem necessary or desirable for the completion of the approved project, (2) not select the application for funding, or (3) defer action on the application for such reasons as lack of funds or a need for further review.

(b) An application which is deferred or not selected for funding is not precluded from reconsideration or resubmission.

(c) The Commissioner will notify the applicant in writing of the disposition of its application. A notification of grant award or contract document will be issued to notify the applicant of a project application selected for funding.

(d) If the Commissioner awards a grant, the grant shall be subject to, and the grant award document will incorporate, the grant terms and conditions set forth in appendix A to this subchapter, pursuant to Sec. 100a.290. If the Commissioner awards a contract, the contract award document shall include whatever provisions are required by Federal law or regulations, including the regulations of the applicable Federal program.
(20 U.S.C. 1221c(b)(1).

Sec.100a.28 Amendments.

The grant or contract must be appropriately amended prior to any material change in the administration of an approved project, or in organization, policies, or operations affecting an approved project. Substantive amendments will be subject to approval in the same manner as original applications. Project amendments may be initiated by the Commissioner if changes are made in Federal appropriations or laws governing such projects. If such amendment constitutes a partial termination of the award, the procedures contained in Sec. 100a.495 shall apply.
(20 U.S.C. 1221c(b)(1); 1232c.)

Sec.100a.29 Budget revisions and minor deviations.

(a) State and local governments.--(1) This paragraph applies only to recipients which are State and local governments (as defined in Sec. 100.1 of this subchapter).
(OMB Circular No. A 102, attachment K.)

(2) As used in this paragraph:

(i) "Direct cost object class budget categories" include only the following:

- (a) Personnel;
- (b) Fringe benefits;
- (c) Travel;
- (d) Equipment;
- (e) Supplies;
- (f) Contractual;
- (g) Construction; and
- (h) Other.

(ii) "Construction" means solely or primarily for construction.

(iii) "Nonconstruction" means not solely or primarily for construction.
(OMB Circular No. A-102, exhibit M-3, 5.)

(3) For nonconstruction grants and contracts, State and local government recipients shall request prior approval promptly from the Commissioner for budget revisions whenever:

(i) The revision results from changes in the scope or the objectives of the project;

(ii) The revision indicates the need for additional Federal funding;

(iii) The budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or 5 percent of the budget, whichever is greater. The same criteria apply to the cumulative amount of transfers among projects, functions, and activities when budgeted separately for a grant or contract, except that no transfer is permissible which could cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(iv) The budget is $100,000 or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed 5 percent of the budget. The same criteria apply to the cumulative amount of transfers among projects, functions, and activities when budgeted separately for a grant or contract, except that no transfer is permissible which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(v) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(vi) The revisions pertain to the addition of items requiring prior approval in accordance with the provisions of appendix B of this subchapter.

(OMB Circular No. A-102, attachment K, 1-2.)

(4) Budget revisions for nonconstruction grants or contracts, other than those revisions set forth in paragraph (a)(3) of this section, do not require approval by the Commissioner. Budget revisions which do not require such approval include (i) the use of recipient funds in furtherance of project objectives over and above the recipient minimum share (if any) included in the approved budget and (ii) the transfer of amounts budgeted for direct costs to absorb authorized increases, in indirect costs.

(OMB Circular No. A-102, attachment K, 2.)

(5) For construction grants and contracts, State and local government recipients shall request prior approval promptly from the Commissioner for budget revisions whenever;

(i) The revision results from changes in the scope or objective of the project; or

(ii) The revision increases the budgeted amounts of Federal funds needed to complete the project.

(OMB Circular No. A-102, attachment K, 2.)

(6)(i) For both construction and nonconstruction grants and contracts, State and local government recipients shall notify the Commissioner promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than $5,000 or 5 percent of the Federal grant or contract, whichever is greater.

(ii) The notification required in paragraph (a)(6)(i) of this section will not be required when applications for additional funding are submitted for continuing grants and contracts and those applications include the recipient's estimate of what the unobligated balance of federally-authorized funds will be at the end of the current period.

(OMB Circular No. A-102, attachment K, 2.)

(7) When requesting approval for budget revisions, recipients shall use the budget forms which were used in the application. However, recipients may request by letter the approvals required by paragraph (a)(3)(vi) of this section.

(8) Within 30 days from the date of receipt of the request for budget revisions, the Commissioner will review the request and notify the recipient as to whether or not the budget revisions have been approved. If the revision is still under consideration at the end of that 30-day period, the Commissioner will inform the recipient in writing as to when the recipient may expect the Commissioner's decision.

(OMB Circular No. A-102, attachment K, 3.)

(b) Recipients other than State and local governments.--Minor deviations from the project of a recipient other than a State or local government (as defined in Sec. 100.1 of this subchapter) are permitted without the necessity for an approved amendment or revision where (1) they do not result in expenditures in excess of the total amount granted, (2) there is not any material change in the content or the administration of the approved project, and (c) expenditures are otherwise made in accordance with, and for kinds of expenditures authorized in, the approved application.

(20 U.S.C. 1221c(b)(1).)

Sec.100a.30 Service contracts.

(a) Each project application shall provide that the activities and services for which Federal financial assistance is sought will be administered by, or under the supervision of, the applicant.

(b) The applicant shall not transfer to others responsibility in whole or in part for the use of Federal funds or for the conduct of project activities, but may enter into contracts or arrangements with others for carrying out a portion of any such activities pursuant to Subpart I of this part.

(c) In applying for Federal assistance, the applicant shall indicate in the application any intention it may have of entering into contracts or other arrangements with individuals or organizations to conduct any portion of any activity proposed in the application. The applicant shall not enter into any such contract or arrangement unless the intention to do so is included in the approved application or an approved amendment or revision thereto.

(20 U.S.C. 1221c(b)(1), 1232c(b)(1).)

Sec.100a.31 Preapplications.

Where he deems it necessary or desirable for the efficient administration of a Federal program, the Commissioner may require any applicant for assistance under such program to submit a preapplication for review prior to the acceptance of an application submitted under Sec. 100a.15.

(20 U.S.C. 1221c(b)(1).)

SUBPART B -- STATE PLANS

Sec.100b.36 Governor's comments.

Prior to the submission to the Commissioner of an annual program plan, State plan, or an amendment to either of the foregoing, the State agency shall afford the Governor of such State an opportunity to comment on the relationship of the plan or amendment to comprehensive and other State plans and programs. The Governor shall be afforded a period of not less than 45 days in which to make such comments. Any such comments, or, if the Governor makes no comments, a statement to that effect, shall be attached to the plan or amendment when the same is submitted to the Commissioner.

(20 U.S.C. 1221e-3(a)(1); 38 FR 32877)

Sec.100b.29 Budget revisions and minor deviations.

(a) Needs of State governments.

The State agency shall notify the Commissioner promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the State agency by more than $5,000 or 5 percent of the amount of Federal authorized funds, whichever is greater.

(OMB Circular No. A-102, attachment K, 2.)

(b) Deviations from approved budgets.--Expenditures of State agencies and subgrantees will not be considered ineligible for Federal financial participation solely because of minor deviations from an approved project: Provided, That the expenditures in question are made in connection with such project under an approved State plan (or approved State application, as the case may be), in accordance with the applicable Federal Statute and regulations, and the total Federal share will not exceed the State's allotment.

(20 U.S.C. 1221c(b)(1).)

Sec.100b.35 Effective dates of applications, plans, and amendments.

(a) Federal financial participation is available only with respect to obligations incurred under (1) an approved State plan (in the case of the programs set forth in Sec. 100b.10 other than those referenced in Sec. 100b.15(a)), or (2) a general application on file with the Commissioner and an approved annual program plan (in the case of the programs referenced in Sec. 100b.15(a)).

(b) A State plan, general application, annual program plan, or amendment to any of the foregoing, shall be considered to be in effect as of the date on which it is submitted to the Federal Government by the State in substantially approvable form, but in no event shall the effective date be earlier than the first day of the fiscal year for which it is submitted.

(c) The State agency will be apprised of the effective date in the notice of approval sent to the State agency by the Commissioner.

CITATION	RULES AND REGULATIONS
	(d) Federal funds, except funds made available expressly for the development of State plans, State applications, State agreements, general applications, or annual program plans, shall not be available for obligation with respect to (1) binding commitments (other than those relating to personal services, utility services, travel, or the rental of equipment or facilities) entered into, or (2) personal services, utility services, travel, or the rental of equipment or facilities rendered or performed, prior to the effective date of the plan, application, or agreement (as the case may be). (20 U.S.C. 1221e 3(a)(1)).
Sec. 100a.495	Termination and suspension for cause. (a) Termination.-- (1) This section applies to the Federal programs of assistance listed in Sec. 100a.10(a), except those Federal programs under which recipients are entitled to an opportunity for a hearing pursuant to 5 U.S.C. 554. (2) This section applies to contracts other than those specified in Sec. 100 .10(b). (3) Assistance under any Federal program to which this part is applicable may be terminated in whole or in part if the Commissioner determines, after affording the recipient reasonable notice and an opportunity to be heard, that the recipient has failed to carry out its approved project proposal in accordance with the applicable law and the terms of such assistance or has otherwise failed to comply with any law, regulation, assurance, term or condition applicable to the grant or contract. (b) Notice of termination. Proceedings with respect to the termination of the grant or contract shall be initiated by the mailing of a notice to the recipient setting forth the basis of the proposed termination and the procedures available to the recipient under this section and Part 16 of this title. (c) Suspension of assistance. Subject to paragraph (f) of this section, assistance may be suspended during the pendency of a termination proceeding initiated pursuant to this section. (d) Notice of suspension. If the Commissioner determines that suspension of assistance during the pendency of a termination proceeding is necessary, notice of the suspension shall be mailed to the recipient (which may be included in the notice of termination). The notice of suspension shall: (1) Inform the recipient of that determination, (2) advise the recipient of the effective date of the suspension (which will be no earlier than the date of the notice of termination) and (3) offer the recipient an opportunity to show cause why such action should not be taken. (e) Effect of notice of suspension. (1) The notice required under paragraph (d) of this section shall advise the recipient that no new expenditures or obligations made or incurred in connection with the grant or contract during the period of the suspension will be recognized by the Government, in the event that assistance is ultimately terminated. (2) Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved project, and not in anticipation of suspension or termination, will not be considered new expenditures.

CITATION

RULES AND REGULATIONS

(f) Opportunity to show cause.--If the recipient requests an opportunity to show cause why a suspension of assistance should not be continued or imposed, the Commissioner will, within 7 days after receiving such request, hold an informal meeting for that purpose.

(g) Grant appeals board. (1) The recipient may appeal the Government's decision to terminate the grant or contract by submitting an application for review to the Departmental Grant Appeals Board pursuant to Part 16 of this title. (2) Either the recipient or the Commissioner may request an informal meeting regarding the proposed termination, but for the purposes of Sec. 16.5(b)(2) of this title, the recipient shall be deemed to have exhausted the Office of Education's informal procedures upon its receipt of the notice of termination.

(h) Effective date of termination. Termination of assistance under this section will be effected by the delivery to the recipient of the notice of termination under paragraph (b) of this section; or, where the recipient invokes the procedures available under paragraph (g) of this section, upon a final decision under Sec. 16.10 of this title.

(i) Effect of termination.--(1) In the event assistance is terminated under this section, financial obligations incurred by the recipient prior to the effective date of such termination will be allowable to the extent they would have been allowable had such assistance not been terminated, except that (i) no obligations incurred during the period in which such assistance was suspended and no obligations incurred in anticipation of suspension or termination will be allowed and (ii) the recipient shall cancel as many outstanding obligations as possible.

(2) Within 60 days of the effective date of termination of assistance under this section, the recipient shall furnish an itemized accounting of funds expended, obligated, and remaining. Within 30 days of a request therefor, the recipient shall remit to the Government any amounts found due.

(20 U.S.C. 1221c(b)(1); OMB Circular No. A-102, attachment L, 2-8.)

Sec. 100b.495

Termination of program.

If a State desires at any time not to participate in a Federal program, or upon termination of the program, the State shall refund to the Federal Government any unexpended or unobligated funds which have been paid to the State agency under such Federal program.

(20 U.S.C. 1232d.)

LEGISLATION

20 USC 1232d Sec. 435

PAYMENTS

Sec. 435. Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

(20 U.S.C. 1232d) Enacted April 13, 1970, P.L. 91-230, Title IV, sec. 401(a)(10), 84 Stat. 170; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326.

RESPONSIBILITY OF STATES TO FURNISH INFORMATION

20 USC
1232f
Sec. 437

Sec. 437. (a)[1] The Commissioner shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall--

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available;

(3) with respect to the second preceding fiscal year, include a compilation of reports from local educational agencies and other public and private agencies and institutions within such State which sets forth the amount of such Federal funds received by each such agency and the purposes for which such funds were expended;

(4) with respect to such second preceding fiscal year, include a statistical report on the individuals served or affected by programs, projects, or activities assisted with such Federal funds; and

(5) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

(b) On or before March 31 of each year, the Commissioner shall submit to the Committee on Labor and Public Welfare of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

(20 U.S.C. 1232f) Enacted August 21, 1974, P.L. 93-380, sec. 512(a), 88 Stat. 571; amended April 21, 1976, P.L. 94-273, sec. 17, 90 Stat. 379; amended October 12, 1976, P.L. 94-482, Title V, Part A, sec. 501(f)(2), (f)(3), 90 Stat. 2237.

---

[1] Title II, Section 204(5) of P.L. 94-274 (Enacted April 21, 1976, 90 Stat. 392, 393) provides that the period of July 1, 1976, through September 30, 1976, shall be treated as part of the fiscal year beginning July 1, 1975, for the purposes of Section 437(a) of the General Education Provisions Act.

CITATION	LEGISLATION

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS[1]

20 USC
1232g
Sec. 438

Sec. 438.(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institutions, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations--

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a shcool of such agency or at such institution are provided an opportunity

---

[1] This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

CITATION	LEGISLATION

for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "educational records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such

CITATION	LEGISLATION

treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary, or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(20 U.S.C. 1232g) Enacted August 21, 1974, P.L. 93-380, sec. 513(a), 88 Stat. 571, 574; amended December 31, 1974, P.L. 93-568, sec. 2, 88 Stat. 1858, 1860.

SUBPART A -- GENERAL

Sec. 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]
(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).
(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.
(20 U.S.C. 1232g)

Sec. 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.
(20 U.S.C. 1232g)

Sec. 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV, of Pub. L. 90-247 as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.
(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student" the student's name, address, telephone number, date and place of birth,

major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or insittution attended by the student, and other similar information.
(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therin, orally or in writing, or by electronic means, or by any other means to any party.
(20 USC 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in Sec. 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.
(20 U.S.C. 1232g (a)(3)).

"Education records" (a) means those which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in pagagraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or isntitution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student; and

(iii) Not disclosed to anyone other than individuals providing the treatment; Provided, That the records can personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or insitiution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or insitiution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4)).

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in Sec. 99.31(a)(4), means a payment of funds provided to an individual (or a payment in king of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or insitution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an insitiution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d)).

"Panel" means the body which will adjudicate cases under procedures set forth in Secs. 99.65-99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation, or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.
(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.
(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.
(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.
(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.
(20 U.S.C. 1232g(a)(5)).

Sec. 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondadry education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of Sec. 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.
(20 U.S.C. 1232g(d)).

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

Sec. 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of--

(1) Informing parents of students or eligible students of their rights under Sec. 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with Sec. 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies; and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by Secs. 99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under Sec. 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest," and (ii) a specification of the personally identifiable information to be designated as directory information under Sec. 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by Sec. 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in Sec. 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students. (20 U.S.C. 1232g(e) and (f)).

CITATION	RULES AND REGULATIONS
Sec. 99.6	Annual notification of rights. (a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following: (1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under Sec. 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and (2) The right to file complaints under Sec. 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part. (b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English. (20 U.S.C. 1232g(e)).
Sec. 99.7	Limitations on waivers. (a) Subject to the limitations in this section and Sec. 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate. (b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver. (c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in Sec. 99.12(a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution. (d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual. (e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions. (f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

CITATION	RULES AND REGULATIONS

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.
(20 U.S.C. 1232g(a)(1)(B) and (C))

Sec. 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; Provided, That the fee does not effectively prevent the parents and students from exercising their rights to inspect and review those records.

[illegible]) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.
(20 U.S.C. 1232g(a)(1))

SUBPART B -- INSPECTION AND REVIEW OF EDUCATION RECORDS

Sec. 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by Sec. 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

CITATION	RULES AND REGULATIONS
Sec. 99.12	Limitations on right to inspect and review education records at the postsecondary level. (a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records: (1) Financial records and statements of their parents or any information contained therein; (2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; Provided, That; (i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and (ii) The letters and statements are used only for the purposes for which they were specifically intended. (3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975: (i) Respecting admission to an educational institution; (ii) Respecting an application for employment, or (iii) Respecting the receipt of an honor or honorary recognition: Provided, That the student has waived his or her right to inspect and review those letters and statements of recommendation under Sec. 99.7(c). (20 U.S.C. 1232g(a)(1)(B)) (b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student. (20 U.S.C. 1232g(a)(1)(A)
Sec. 99.13	Limitation on destruction of education records. An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions: (a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Sec. 99.11; (b) Explanations placed in the education record under Sec. 99.21 shall be maintained as provided in Sec. 99.21(d), and (c) The record of access required under Sec. 99.32 shall be maintained for as long as the education record to which it pertains is maintained. (20 U.S.C. 1232g(f))

CITATION	RULES AND REGULATIONS
	SUBPART C -- AMENDMENT OF EDUCATION RECORDS
Sec. 99.20	Request to amend education records. (a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them. (b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request. (c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under Sec. 99.21. (20 U.S.C. 1232g(a)(2))
Sec. 99.21	Right to a hearing. (a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Sec. 99.22. (b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing. (c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution. (d) Any explanation placed in the education records of the student under paragraph (c) of this section shall: (1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and (2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party. (20 U.S.C. 1232g(a)(2))

CITATION — RULES AND REGULATIONS

Sec. 99.22 Conduct of the hearing.

The hearing required to be held by Sec. 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or instituiton, not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Sec. 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.
(20 U.S.C. 1232g(a)(2)).

SUBPART D -- DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION FROM EDUCATION RECORDS

Sec. 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Sec. 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include;

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.
(20 U.S.C. 1232g(b)(1) and (b)(2)(A))

Sec. 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is--

(1) To other school officials, including teachers, within the educational institution, or local educational agency, who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in Sec. 99.34;

(3) Subject to the conditions set forth in Sec. 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,
(ii) The Secretary,
(iii) The Commissioner, the Director of the National Institute of Education or the Assistant Secretary for Education, or
(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; Provided, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,
(ii) To determine the amount of the financial aid,
(iii) To determine the conditions which will be imposed regarding the financial aid, or
(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of

developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; Provided, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; Provided, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in Sec. 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.
(20 U.S.C. 1232g(b))(1))

Sec. 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under Sec. 99.31(a)(1), or to disclosures of directory information under Sec. 99.37.

(c) The record of disclosures may be inspected;

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties

authorized in, and under the conditions set forth in Sec. 99.31 (a)-(1) and (3).
(20 U.S.C. 1232g(b)(4)(A)).

Sec. 99.33 Limitation on redisclosure.

(a) An educational agency or insitutions may disclose personally identifiable information form the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution form disclosing personally identifiable information under Sec. 99.31 with understanding that the information will be redisclosed to other parties under that section; Provided, That the recordkeeping requirements of Sec. 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under Sec. 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.
(20 U.S.C. 1232g(b)(4)(B)).

Sec. 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to Sec. 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except,

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a ~~notice~~ in its policies and procedures formulated under Sec. 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student upon request with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may

disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; Provided, That the disclosure meets the requirements of paragraph (a) of this section.
(20 U.S.C. 1232g(b)(1)(B))

Sec. 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in Sec. 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under Sec. 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in Sec. 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.
(20 U.S.C. 1232g(b)(3))

Sec. 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.
(20 U.S.C. 1232g(b)(1)(I)).

CITATION	RULES AND REGULATIONS
Sec. 99.37	Conditions for disclosure of directory information. (a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in Sec. 99.3) under paragraph (c) of this section. (b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section. (c) An educational agency or institution which wishes to designate directory information shall give public notice of the following: (1) The categories of personally identifiable information which the institution has designated as directory information; (2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and (3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student. (20 U.S.C. 1232g(a)(5)(A) and (B))
	SUBPART E -- ENFORCEMENT
Sec. 99.60	Office and review board. (a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in Secs. 99.65-99.67. (b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave., S.W., Washington, D.C. 20201. (20 U.S.C. 1232g(g))
Sec. 99.61	Conflict with State or local law. An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this within 45 days of any such determination, giving the text and legal citiation of the conflicting law. (20 U.S.C. 1232g(f))

Sec. 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.
(20 U.S.C. 1232g(f)(g).)

Sec. 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph(c)(3) of this section, the matter will be referred to the Review Board for a hearing under Secs. 99.64-99.67, inclusive.
(20 U.S.C. 1232g(f))

Sec. 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in Sec. 99.1(a) shall be made

available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.
(20 U.S.C. 1232g(f))

Sec. 99.65 Hearing procedures.

(a) Panels. The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under Sec. 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) Procedural rules. (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of ths paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf;

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.
(20 U.S.C. 1232g(g).)

Sec. 99.66 Hearing before Panel or a hearing officer.

A hearing pursuant to Sec. 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.
(20 U.S.C. 1232g(g))

Sec. 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decison shall be mailed promptly by the Panel to each party (or to the party's counsel), and to

CITATION	RULES AND REGULATIONS
	the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time. (c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision. (d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board. (e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings. (f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney. (20 U.S.C. 1232g(g))
	LEGISLATION
	PROTECTION OF PUPIL RIGHTS
20 USC 1232h Sec. 439	Sec. 439. All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable programs designed to explore or develop new or unproven teaching methods or techniques. (20 U.S.C. 1232h) Enacted August 21, 1974, P.L. 93-380, sec. 514(a), 88 Stat. 574.
	LIMITATION ON WITHHOLDING OF FEDERAL FUNDS
20 USC 1232 Sec. 440	Sec. 440.(a) Except as provided in section 438(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall

not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with Title VI of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include--

(1) at least 30 days prior, written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(20 U.S.C. 1232i) Enacted August 21, 1974, P.L. 93-380, sec. 515(a), 88 Stat. 574; amended October 12, 1976, P.L. 94-482, Title IV, secs. 407, 408, 90 Stat. 2232, 2233.

EDUCATION OF THE HANDICAPPED ACT
ELIGIBILITY

20 USC 1412
Sec. 612

Sec. 612. In order to qualify for assistance under this part in any fiscal year, a State shall demonstrate to the Commissioner that the following conditions are met:

(1) The State has in effect a policy that assures all handicapped children the right to a free appropriate public education.

(2) The State has developed a plan pursuant to section 613(b) in effect prior to the date of the enactment of the Education for All Handicapped Children Act of 1975 and submitted not later than August 21, 1975, which will be amended so as to comply with the provisions of this paragraph. Each such amended plan shall set forth in detail the policies and procedures which the State will undertake or has undertaken in order to assure that--

(A) there is established (i) a goal of providing full educational opportunity to all handicapped children, (ii) a detailed timetable for accomplishing such a goal, and (iii) a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet such a goal;

(B) a free appropriate public education will be available for all handicapped children between the ages of three and eighteen within the State not later than September 1, 1978, and for all handicapped children between the ages of three and twenty-one within the State not later than September 1, 1980, except that, with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law or practice, or the order of any court, respecting public education within such age groups in the State;

(C) all children residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, and that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

(D) policies and procedures are established in accordance with detailed criteria prescribed under section 617(c); and

(E) the amendment to the plan submitted by the State required by this section shall be available to parents, guardians, and other members of the general public at least thirty days prior to the date of submission of the amendment to the Commission.

(3) The State has established priorities for providing a free appropriate public education to all handicapped children,

CITATION	LEGISLATION

which priorities shall meet the timetables set forth in clause (b) of paragraph (2) of this section, first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children within each disability, with the most severe handicaps who are receiving an inadequate education, and has made adequate progress in meeting the timetables set forth in clause (B) of paragraph (2) of this section.

(4) Each local educational agency in the State will maintain records of the individualized education program for each handicapped child, and such program shall be established, reviewed, and revised as provided in section 614(a)(5).

(5) The State has established (A) procedural safeguards as required by section 615, (B) procedures to assure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, and (C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State, or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet educational standards of the State educational agency.

(7) The State shall assure that (A) in carrying out the requirements of this section provedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children, and (B) there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to adoption of the policies, programs, and procedures required pursuant to the provisions of this section and section 613.

(20 U.S.C. 1412) Enacted April 13, 1970, P.L. 91-230, Title VI, sec. 612, 84 Stat. 178; amended June 23, 1972, P.L. 92-318, sec. 421(b)(1))C), 86 Stat. 341: amended August 21, 1974, P.L. 93-380, sec. 614(b)(1), 88 Stat. 582; amended November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 780, 781, 782.

CITATION	RULES AND REGULATIONS
Sec.121a.2	Applicability to State, local, and private agencies. (a) States. This part applies to each State which receives payments under Part B of the Education of the Handicapped Act. (b) Public agencies within the State. The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities. (c) Private schools and facilities. Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency. (See Secs. 121a.-400 - 121a.403.) (20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B).)
Sec.121a.11	Public agency. As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivisions of the State which are responsible for providing education to handicapped children. (20 U.S.C. 1412(2)(B); 1412(6); 1413(a).)
	ANNUAL PROGRAM PLANS - GENERAL
Sec. 121a.111	Condition of assistance. In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency. (20 U.S.C. 1232c(b), 1412,1413.)
Sec. 121a.110	Contents of plan. Each annual program plan must contain the provisions required in this subpart. (20 U.S.C. 1412, 1413, 1232c(b).)
	ANNUAL PROGRAM PLANS - CONTENTS
Sec.121a.120	Public participation. (a) Each annual program plan must include procedures which insure that the requirements in Secs.121a.280 - 121a.284 are met. (b) Each annual program must also include the following: (1) A statement describing the methods used by the State educational agency to provide notice of the public hearings on the annual program plan. The statement must include: (i) A copy of each news release and advertisement used to provide notice,

CITATION	RULES AND REGULATIONS
	(ii) A list of the newspapers and other media in which the State educational agency announced or published the notice, and (iii) The dates on which the notice was announced or published. (2) A list of the dates and locations of the public hearings on the annual program plan. (3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments. (4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b)(1) of this section. (20 U.S.C. 1412(7).)
Sec. 121a.121	Right to a free appropriate public education. (a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under Sec. 121a.122. (b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy. (c) The information must show that the policy: (1) Applies to all public agencies in the State; (2) Applies to all handicapped children; (3) Implements the priorities established under Sec. 121a.127(a)(1) of this subpart; and (4) Establishes timelines for implementing the policy, in accordance with Sec. 121a.122. (20 U.S.C. 1412(1)(2)(B), (6); 1413(a)(3).)
Sec. 121a.122	Timelines and ages for free appropriate public education. (a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980. (b) Documents relating to timelines. Each annual program plan must include a copy of each statue, court order, attorney general decision, and other State document which demonstrates that the State has established timeliness in accordance with paragraph (a) of this section. (c) Exception. The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or

CITATION	RULES AND REGULATIONS
	twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State. (d) Documents relating to exceptions. Each annual program plan must: (1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and (2) Include a copy of each State law, court order and other document which provides a basis for the exception. (20 U.S.C. 1412(2)(B).)
Sec. 121a.123	Full educational opportunity goal. Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one (20 U.S.C. 1412(2)(A).)
Sec. 121a.124	Full Educational opportunity goal -- data requirement. Beginning with school year 1978-1979, each annual program plan must contain the following information: (a) The estimated number of handicapped children who need special educational and related services. (b) For the current school year: (1) The number of handicapped children aged birth through two, who are receiving special educational and related services, and (2) The number of handicapped children: (i) Who are receiving a free appropriate public education, (ii) Who need, but are not receiving a free appropriate public education, (iii) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and (iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education. (c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year. (d) A description of the basis used to determine the data required under this section. (e) The data required by paragraphs (a), (b), and (c) of this section must be provided: (1) For each disability category (except for children aged birth through two), and (2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one. (20 U.S.C. 1412(2)(A).)

Sec. 121a.125

Full educational opportunity goal -- timetable.

(a) General requirement. Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) Content of timetable. (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(20 U.S.C. 1412(2)(A).)

Sec. 121a.126

Full educational opportunity goal -- facilities, personnel, and services.

(a) General requirement. Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) Statistical description. Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraph (b)(1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) Data categories. The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services.

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) Rationale. Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.
(20 U.S.C. 1412(2)(A).)

Sec. 121a.127

Priorities.

(a) General requirement. Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under Secs. 121a.320-121a.324 of Subpart C.

(2) The State priorities meet the timelines under Sec. 121a.122 of this subpart, and

(3) The State has made progress in meeting those timelines.

(b) Child data. (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in Secs. 121a.321 of Subpart C:

(1) By disability category, and

(2) By the age ranges in Sec. 121a.124(e)(2) of this subpart.

(c) Activities and resources. Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.
(20 U.S.C. 1412(3).)

Sec. 121a.128

Identification, location, and evaluation of handicapped children.

(a) General requirement. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) Information. Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(20 U.S.C. 1412(2)(C).)

Sec. 121a.129

Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Commissioner shall use the criteria in Secs. 121a.560 - 121a.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.130

Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each

CITATION	RULES AND REGULATIONS
	handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C. (b) Each annual program plan must include: (1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and (2) The procedures which the State educational agency follows in monitoring and evaluating those programs. (20 U.S.C. 1412(4).)
Sec. 121a.131	Procedural safeguards. Each annual program plan must include procedural safeguards which insure that the requirements in Secs. 121a.500 - 121a.514 of Subpart E are met. (20 U.S.C. 1412(5)(A).)
Sec. 121a.132	Least restrictive environment. (a) Each annual program plan must include procedures which insure that the requirements in Secs. 121a.550 - 121a.556 of Subpart E are met. (b) Each annual program plan must include the following information: (1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with Secs. 121a.550 - 121a.556 of Subpart E. (2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment. (20 U.S.C. 1412(5)(B).)
Sec. 121a.133	Protection in evaluation procedures. Each annual program plan must include procedures which insure that the requirements in Secs. 121a.530 - 121a.534 of Subpart E are met. (10 U.S.C. 1412(5)(C).)
Sec. 121a.134	Responsibility of State educational agency for all educational programs. (a) Each annual program plan must include information which shows that the requirements in Sec. 121a.600 of Subpart F are met. (b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph. (20 U.S.C. 1412(6).)
Sec. 121a.135	Monitoring procedures. Each annual program plan must include information which shows that the requirements in Sec. 421a.601 and Sec. 121a.602 of Subpart F are met. (20 U.S.C. 1412(6).)

CITATION	RULES AND REGULATIONS
Sec. 121a.136	Implementation procedures -- State educational agency. Each annual program plan msut describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency. (20 U.S.C. 1412(6).)
Sec. 121a.137	Procedures for consultation. Each annual program plan must include assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children. (20 U.S.C. 1412(7)(A).)
	PUBLIC PARTICIPATION
Sec. 121a.280	Public hearings before adopting an annual program plan. (a) Prior to its adoption of an annual program plan, the State of educational agency shall: (1) Make the plan available to the general public. (2) Hold public hearings, and (3) Provide an opportunity for comment by the general public on the plan. (20 U.S.C. 1412(7).)
Sec. 121a.281	Notice. (a) The State educational agency shall provide notice to the general public of the public hearings. (b) The notice must be in sufficient detail to inform the public about: (1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act. (2) The availability of the annual program plan. (3) The date, time, and location of each public hearing, (4) The procedures for submitting written comments about the plan, and (5) The timetable for developing the final plan and submitting it to the Commissioner for approval. (c) The notice must be published or announced: (1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and and (2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate. (20 U.S.C. 1412(7).)
Sec. 121a.282	Opportunity to participate: comment period. (a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

CITATION	RULES AND REGULATIONS
	(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under Sec. 121a.281. (20 U.S.C. 1412(7).)
Sec. 121a.283	Review of public comments before adopting plan. Before adopting its annual program plan, the State educational agency shall: (a) Review and consider all public comments, and (b) Make any necessary modifications in the plan. (20 U.S.C. 1412(7).)
Sec. 121a.284	Publication and availability of approved plan. After the Commissioner approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person. (20 U.S.C. 1412(7).)
	SUBPART C -- SERVICES
	FREE APPROPRIATE PUBLIC EDUCATION
Sec. 121a.300	Timelines for free appropriate public education. (a) General. Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980. (b) Age ranges 3-5 and 18-21. This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one: (1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability. (2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age. (3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975).)

Sec. 121a.301

Free appropriate public education -- methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(20 U.S.C. 1401(18); 1412(2)(B).)

Sec. 121a.302

Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(20 U.S.C. 1412(2)(B); 1413(a)(4)(B).)

Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

Sec. 121a.303

Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school or functioning properly.

(20 U.S.C. 1412(2)(B).)

Sec. 121a.304

Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under Secs. 121a.320 - 121a.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.
(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

Sec. 121a.305

Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to non-handicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.
(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

Comment. The above list of program options is not exhaustive, and could include any program or activity in which non-handicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under Secs. 121a.320 - 121a.324.

Sec. 121a.306

Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.
(20 U.S.C. 1412(2)(A); 1414(a)(1)(C).)

Sec. 121a.307

Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) Regular physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.
(20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6).)

PRIORITIES IN THE USE OF PART B FUNDS

Sec. 121a.320

Definitions of "first priority children" and "second priority children."

For the purposes of Secs. 121a.321 - 121a.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under Sec. 121a.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.
(20 U.S.C. 1412(3).)

INDIVIDUALIZED EDUCATION PROGRAMS

Sec. 121a.341

State educational agency responsibility.

(a) Public agencies. The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) Private schools and facilities. The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.
(20 U.S.C. 1412(4), (6); 1413(a)(4).)

Sec. 121a.342

When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

CITATION	RULES AND REGULATIONS
	(b) An individualized education program must: (1) Be in effect before special education and related services are provided to a child; and (2) Be implemented as soon as possible following the meetings under Sec. 121a.343. (20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975).)
Sec. 121a.343	Meetings. (a) *General*. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program. (b) *Handicapped children currently served*. If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977. (c) *Other handicapped children*. For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services. (d) *Review*. Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year. (20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5).)
Sec. 121a.344	Participants in meetings. (a) *General*. The public agency shall insure that each meeting includes the following participants: (1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education, (2) The child's teacher, (3) One or both of the child's parents, subject to Sec. 121a.345, (4) The child, where appropriate, (5) Other individuals at the discretion of the parent or agency. (b) *Evaluation personnel*. For a handicapped child who has been evaluated for the first time, the public agency shall insure: (1) That a member of the evaluation team participates in the meeting; or (2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation. (20 U.S.C. 1401(19); 1412(2)(B), (4), (6); 1414(a)(5).)

CITATION	RULES AND REGULATIONS
Sec. 121a.345	Parent participation. (a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance. (c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls. (d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received, and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. (f) The public agency shall give the parent, on request, a copy of the individualized education program. (20 U.S.C. 1401(19); 1412(2)(B), (4), (6): 1414(a)(5).)
Sec. 121a.346	Content of individualized education program. The individualized education program for each child must include: (a) A statement of the child's present levels of educational performance; (b) A statement of annual goals, including short term instructional objectives; (c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs; (d) The projected dates for initiation of services and the anticipated duration of the services; and (e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. (20 U.S.C. 1401(19): 1412(2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

CITATION	RULES AND REGULATIONS
Sec. 121a.349	Individualized education program -- accountability. Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives. (20 U.S.C. 1412(2)(B); 1414(a)(5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)
	HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC SCHOOLS
Sec. 121a.403	Placement of children by parents. (a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Secs. 121a.450 - 121a.460. (b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Secs. 121a.500 - 121a.514 of Subpart E. (20 U.S.C. 1412(2)(B); 1415).)
	PROTECTION IN EVALUATION PROCEDURES
Sec. 121a.530	General. (a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Secs. 121a.530 - 121a.534. (b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory. (20 U.S.C. 1412(5)(C).)
Sec. 121a.531	Preplacement evaluation. Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of Sec. 121a.532. (20 U.S.C. 1412(5)(C).)
Sec. 121a.532	Evaluation procedures. State and local educational agencies shall insure at a minimum, that:

CITATION	RULES AND REGULATIONS
	(a) Tests and other evaluation materials: (1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; (2) Have been validated for the specific purpose for which they are used; and (3) Are administered by trained personnel in conformance with the instructions provided by their producer; (b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; (c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure); (d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and (e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability. (f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. 1412(5)(C).)
Sec. 121a.533	Placement procedures. (a) In interpreting evaluation data and in making placement decisions, each public agency shall: (1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) Insure that information obtained from all of these sources is documented and carefully considered; (3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) Insure that the placement decision is made in conformity with the least restrictive environment rules in Secs. 121a.550 - 121a.554. (b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with Secs. 121a.340 - 121a.349 of Subpart C. (20 U.S.C. 1412(5)(C); 1414(a)(5).)

CITATION	RULES AND REGULATIONS
Sec. 121a.534	Reevaluation. Each State and local educational agency shall insure: (a) That each handicapped child's individualized education program is reviewed in accordance with Secs. 121a.340 - 121a.349 of Subpart C, and (b) That an evaluation of the child, based on procedures which meet the requirements under Sec. 121a.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation. (20 U.S.C. 1412(5)(c).)
	LEAST RESTRICTIVE ENVIRONMENT
Sec. 121a.550	General. (a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of Secs. 121a.550 - 121a.556. (b) Each public agency shall insure: (1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and (2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv).)
Sec. 121a.551	Continuum of alternative placements. (a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services. (b) The continuum required under paragraph (a) of this section must: (1) Include the alternative placements listed in the definition of special education under Sec. 121a.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (20 U.S.C. 1412(5)(B).)
Sec. 121a.552	Placements. Each public agency shall insure that: (a) Each handicapped child's educational placement: (1) Is determined at least annually, (2) Is based on his or her individualized education program, and

CITATION	RULES AND REGULATIONS
	(3) Is as close as possible to the child's home; (b) The various alternative placements included under Sec. 121a.551 are available to the extent necessary to implement the individualized education program for each handicapped child; (c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and (d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs. (20 U.S.C. 1412(5)(B).)
Sec. 121a.553	Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 121a.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child. (20 U.S.C. 1412(5)(B).)
Sec. 121a.554	Children in public or private institutions. Each State educational agency shall make arrangements with public and private institutions (such as a memorandum or agreement or special implementation procedures) as may be necessary to insure that Sec. 121a.550 is effectively implemented. (20 U.S.C. 1412(5)(B).)
Sec. 121a.555	Technical assistance and training activities. Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies: (a) Are fully informed about their responsibilities for implementing Sec. 121a.550, and (b) Are provided with technical assistance and training necessary to assist them in this effort. (20 U.S.C. 1412(5)(B).)
Sec. 121a.556	Monitoring activities. (a) The State educational agency shall carry out activities to insure that Sec. 121a.550 is implemented by each public agency. (b) If there is evidence that a public agency makes placements that are inconsistent with Sec. 121a.550 of this subpart, the State educational agency: (1) Shall review the public agency's justification for its actions, and (2) Shall assist in planning and implementing any necessary corrective action. (20 U.S.C. 1412(5)(B).)

CITATION	RULES AND REGULATIONS
	CONFIDENTIALITY OF INFORMATION
Sec. 121a.560	Definitions. As used in this subpart: "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. "Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974). "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.561	Notice to parents. (a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under Sec. 121a.128 of Subpart B, including: (1) A description of the extent to which the notice is given in the native languages of the various population groups in the State; (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information; (3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and (4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations). (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.562	Access rights. (a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.
(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.563

Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.564

Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.
(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.565

List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.
(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.566

Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.
(20 U.S.C. 1412(2)(D); 1417(c).)

Sec. 121a.567

Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is

CITATION	RULES AND REGULATIONS
	inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information. (b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. (c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under Sec. 121a.568. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.568	Opportunity for a hearing. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.569	Result of hearing. (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing. (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. (c) Any explanation placed in the records of the child under this section must: (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.570	Hearing procedures. A hearing held under Sec. 121a.568 of this subpart must be conducted according to the procedures under Sec. 99.22 of this title. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.571	Consent. (a) Parental consent must be obtained before personally identifiable information is:

CITATION	RULES AND REGULATIONS
	(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or (2) Used for any purpose other than meeting a requirement under this part. (b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title. (c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.572	Safeguards. (a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. (b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information. (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 121a.129 of Subpart B and Part 99 of this title. (d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.573	Destruction of information. (a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.574	Children's rights. The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability. (20 U.S.C. 1412(2)(D); 1417(c).)

CITATION	RULES AND REGULATIONS
Sec. 121a.575	Enforcement. The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the Requirements of the Act and the regulations in this part are met. (20 U.S.C. 1412(2)(D); 1417(c).)
Sec. 121a.576	Office of Education. If the Office of Education or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Commissioner shall apply the requirements of 5 U.S.C. section 552a(b) (1)-(2), (4)-(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title. (20 U.S.C. 1412(2)(D); 1417(c).)
	SUBPART F -- STATE ADMINISTRATION STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL
Sec. 121a.600	Responsibility for all educational programs. (a) The State educational agency is responsible for insuring; (1) That the requirements of this part are carried out; and (2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency: (i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and (ii) Meets education standards of the State educational agency (including the requirements of this part). (b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents. (20 U.S.C. 1412(6).)
Sec 121a.601	Monitoring and evaluation activities. Each State educational agency shall: (a) Undertake monitoring and evaluation activities to insure compliance of all public agencies within the State with the requirements of Subparts C, D, and E. (b) Develop procedures (including specific timelines) for monitoring and evaluating public agencies involved in that education of handicapped children. These procedures must include: (1) Collection of data and reports; (2) Conduct of on-site visits; (3) Audit of Federal fund utilization; and (4) Comparison of a sampling of individualized education programs with the programs actually provided. (20 U.S.C. 1412(6); 1413(a)(11).)

CITATION	RULES AND REGULATIONS
Sec. 121a.602	Adoption of complaint procedures. (a) Each State educational agency shall adopt effective procedures for reviewing, investigating, and acting on any allegations of substance, which may be made by public agencies, or private individuals, or organizations, or actions taken by any public agency that are contrary to the requirements of this part. (b) In carrying out the requirements in paragraph (a) of this section, the State educational agency shall: (1) Designate specific individuals within the agency who are responsible for implementing the requirements; (2) Provide for negotiations, technical assistance activities, and other remedial action to achieve compliance; and (3) Provide for the use of sanctions, including the withholding of Part B funds in accordance with Sec. 121a.194. (20 U.S.C. 1412(6).)
	LEGISLATION
20 USC 1413 Sec. 613	STATE PLANS Sec. 613. (a) Any State meeting the eligibility requirements set forth in section 612 and desiring to participate in the program under this part shall submit to the Commissioner, through its State educational agency, a State plan at such time, in such manner, and containing or accompanied by such information, as he deems necessary. Each such plan shall-- (1) set forth policies and procedures designed to assure that funds paid to the State under this part will be expended in accordance with the provisions of this part, with particular attention given to the provisions of sections 611(b), 611(c), 611(d), 612(2), and 612(3); (2) provide that programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241c-2), section 305(b)(8) of such Act (20 U.S.C. 844a(b)(8)) or its successor authority, and section 122(a)(4)(B) of the Vocational Education Act of 1963 (20 U.S.C. 1262(a)(4)(B)), under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with the goal of providing a free appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs; (3) set forth, consistent with the purposes of this Act, a description of programs and procedures for (A) the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special educational instructional and support personnel,

detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and (B) adopting, where appropriate, promising educational practices and materials development through such projects;

(4) set forth policies and procedures to assure--

(A) that, to the extent consistent with the number and location of handicapped children in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this part by providing for such children special education and related services; and

(B) that (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program as required by this part) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State, and (ii) in all such instances the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies;

(5) set forth policies and procedures which assure that the State shall seek to recover any funds made available under this part for services to any child who is determined to be erroneously classified as eligible to be counted under section 611(a)or section 611(d);

(6) provide satisfactory assurance that the control of funds provided under this part, and title to property derived therefrom, shall be in a public agency will administer such funds and property;

(7) provide for (A) making such reports in such form and containing such information as the Commissioner may require to carry out his functions under this part, and (B) keeping such records and affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;

(8) provide procedures to assure that final action with respect to any application submitted by a local educational agency or an intermediate educational unit shall not be taken without first affording the local educational agency or intermediate educational unit involved resonable notice and poorotunity for a hearing;

(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children and in no case to supplant such State and local funds,

and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement of this clause if he concurs with the evidence provided by the State;

(10) provide, consistent with procedures prescribed pursuant to section 617(a)(2), satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the State, including any such funds paid by the State to local educational agencies and intermediate educational units;

(11) provide for procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children (including evaluation of individualized education programs), in accordance with such criteria that the Commissioner shall prescribe pursuant to section 617; and

(12) provide that the State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in or concerned with the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local education officials, and administrators of programs for handicapped children, which (A) advises the State educational agency of unmet needs within the State in the education of handicapped children, (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and (C) assists the State in developing and reporting such data and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(b) Whenever a State educational agency provides free appropriate public education for handicapped children, or provides direct services to such children, such State educational agency shall include, as part of the State plan required by subsection (a) of this section, such additional assurances not specified in such subsection (a) as are contained in section 614(a), except that funds available for the provision of such education or services may be expended without regard to the provisions relating to excess costs in section 614(a).

(c) The Commissioner shall approve any State plan and any modification thereof which--

(1) is submitted by a State eligible in accordance with section 612; and

(2) meets the requirements of subsection (a) and subsection (b).

The Commissioner shall disapprove any State plan which does not meet the requirements of the preceding sentence, but shall not finally disapprove a State plan except after reasonable

CITATION	LEGISLATION
	notice and opportunity for a hearing to the State. (20 U.S.C. 1413) Enacted April 13, 1970, P.L. 91-230, Title VI, Sec. 613, 84 Stat. 179; amended August 21, 1974, P.L. 93-380, Sec. 614(d), 88 Stat. 581, 582; amended November 29, 1975, P.L. 94-142, Sec. 5(a), 89 Stat. 782, 783, 784.
	RULES AND REGULATIONS
	ANNUAL PROGRAM PLANS -- GENERAL
Sec. 121a.112	Certification by the State educational agency and attorney general. Each annual program plan must include: (a) A certification by the officer of the State educational agency authorized to submit the plan that: (1) The plan has been adopted by the State educational agency and (2) The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and (b) A certification by the State Attorney General or other authorized State legal officer that: (1) The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and (2) All plan provisions are consistent with State law. (20 U.S.C. 1413(a).)
Sec. 121a.113	Approval; disapproval. (a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100b of this chapter. (b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for a hearing to the State educational agency. (c) The Commissioner shall use the procedures set forth in Secs. 121a.580 - 121a.583 of Subpart E for a hearing under this section. (20 U.S.C. 1413(c).)
Sec. 121a.114	Effective period of annual program plan. (a) Each annual program plan is effective for a period from the date it becomes effective under Sec. 100b.35 of this chapter through the following June 30. (b) The Commissioner may extent the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act. (20 U.S.C. 1413(a), 1232c(b).)

ANNUAL PROGRAM PLANS -- CONTENT

CITATION	RULES AND REGULATIONS
Sec. 121a.138	Other Federal programs. Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs. (20 U.S.C. 1413(a)(2).)
Sec. 121a.139	Comprehensive system of personnel development. Each annual program plan must include the material required under Secs. 121a.380 - 121a.387 of Subpart C. (20 U.S.C. 1413(a)(3).)
Sec. 121a.140	Private schools. Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met. (20 U.S.C. 1413(a)(4).)
Sec. 121a.141	Recovery of funds for misclassified children. Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611(a) or (d) of the Act. (20 U.S.C. 1413(a)(5).)
Sec. 121a.142	Control of funds and property. Each annual program plan must provide assurance satisfactory to the Commissioner that the control of funds provided under Part B of the Act, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property. (20 U.S.C. 1413(a)(6).)
Sec. 121a.143	Records. Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of

CITATION	RULES AND REGULATIONS
	reports and of proper disbursement of funds provided under Part B of the Act. (20 U.S.C. 1413(a)(7)(B).)
Sec. 121a.144	Hearing on application. Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1413(a)(8).)
Sec. 121a.145	Prohibition of commingling. Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds. (20 U.S.C. 1413(a)(9).)
Sec. 121a.146	Annual evaluation. Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs. (20 U.S.C. 1413(a)(11).)
Sec. 121a.147	State advisory panel. Each annual program plan must provide that the requirements of Secs. 121a.650 - 121a.653 of Subpart F are met. (20 U.S.C. 1413(a)(12).)
Sec. 121a.148	Policies and procedures for use of Part B funds. Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act. (20 U.S.C. 1413(a)(1).)
Sec. 121a.151	Additional information if the State educational agency provides direct services. If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under Secs. 121a.226-121a.228, 121a.231, and 121a.235. (20 U.S.C. 1413(b).)

INDIVIDUALIZED EDUCATION PROGRAMS

Sec. 121a.347 Private school placements.

(a) Developing individualized education programs. (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with Sec. 121a.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) Reviewing and revising individualized education programs. (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.
(20 U.S.C. 1413(a)(4)(B).)

Sec. 121a.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with Sec. 121a.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.
(20 U.S.C. 1413(a)(4)(A).)

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

Sec. 121a.360

Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year :

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requriements of Secs. 121a.-220 - 121a.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under Secs. 121a.182 - 121a.186 do not apply to the State educational agency.
(20 U.S.C. 1411(c)(4); 1413(b); 1414(d).)

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Sec. 121a.380

Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in Sec. 121a.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.
(20 U.S.C. 1413(a)(3).)

Sec. 121a.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the State which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under Sec. 121a.383.

(20 U.S.C. 1412(7)(A); 1413(a)(3).)

Sec. 121a.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation,

CITATION	RULES AND REGULATIONS
	options for academic credit, salary step credit, certification renewal, or updating professional skills); (2) The involvement of local staff; and (3) The use of innovative practices which have been found to be effective. (f) Each annual program plan must: (1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children; (2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents); (3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents); (4) Describe the content and nature of training for each area under paragraph (f)(2) of this section; (5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewise, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel); (6) Specify: (i) The funding sources to be used, and (ii) The time frame for providing it; and (7) Specify procedures for effective evaluation of the extent to which program objectives are met. (20 U.S.C. 1413(a)(3).)
Sec. 121a.383	Personnel development plan. Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs; (b) Describe the results of the needs assessment under Sec. 121a.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and (c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers). (20 U.S.C. 1413(a)(3).)
Sec. 121a.384	Dissemination. (a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including

parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.
(20 U.S.C. 1413(a)(3).)

Sec.
121a.385

Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.
(20 U.S.C. 1413(a)(3).)

Sec.
121a.386

Evaluation.

Each annual program plan must include:

(a) Procedures for evaluating the overall effectiveness of:

(1) The comprehensive system of personnel development in meeting the needs for personnel, and

(2) The procedures for administration of the system; and

(b) A description of the monitoring activities that will be undertaken to assure the implementation of the comprehensive system of personnel development.
(20 U.S.C. 1413(a)(3).)

Sec.
121a.387

Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.
(20 U.S.C. 1413(a)(3).)

CITATION	RULES AND REGULATIONS
	SUBPART D -- PRIVATE SCHOOLS
	HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES
Sec. 121a.400	Applicability of Secs. 121a.401 - 121a.403. Sections 121a.401 - 121a.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (20 U.S.C. 1413(a)(4)(B).)
Sec. 121a.401	Responsibility of State educational agency. Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency: (a) Is provided special education and related services: (1) In conformance with an individualized education program which meets the requirements under Secs. 121a.340 - 121a.349 of Subpart C; (2) At no cost to the parents; and (3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and (b) Has all of the rights of a handicapped child who is served by a public agency. (20 U.S.C. 1413(a)(4)(B).)
Sec. 121a.402	Implementation by State educational agency. In implementing Sec. 121a.401, the State educational agency shall: (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; (b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them. (20 U.S.C. 1413(a)(4)(B).)
	HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES
Sec. 121a.450	Applicability of Secs. 121a.451 - 121a.460. As used in Secs. 121a.451 - 121a.460, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under Secs. 121a.400 - 121a.403. (20 U.S.C. 1413(a)(4)(A).)

CITATION	RULES AND REGULATIONS
Sec. 121a.451	State educational agency responsibility. The State educational agency shall insure that: (a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and (b) The other requirements in Secs. 121a.452 - 121a.460 are met. (20 U.S.C. 1413(a)(4)(A).)
Sec 121a.452	Local educational agency responsibility. (a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency. (b) Each local educational agency shall provide private school handicapped children with genuine opportunities to participate in special education and related services consistent with the number of those children and their needs. (20 U.S.C. 1413(a)(4)(A); 1414(a)(6).)
Sec. 121a.453	Determination of needs, number of children, and types of services. The needs of private school handicapped children, the number of them who will participate under this part, and the types of special education and related services which the local educational agency will provide for them must be determined after consultation with persons knowledgeable of the needs of these children, on a basis comparable to that used in providing for the participation under this part of handicapped children enrolled in public schools. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.454	Service arrangements. Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.455	Differences in services to private school handicapped children. A local educational agency may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children, if: (a) The differences are necessary to meet the special needs of the private school handicapped children, and (b) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance. (20 U.S.C. 1413(a)(4)(a); Wheeler v. Barrera, 417 U.S. 402 (1974).

CITATION	RULES AND REGULATIONS
Sec. 121a.456	Personnel. (a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children for whose needs those services were designed, and only when those services are not normally provided by the private school. (b) Each State or local educational agency providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services. (c) The services provided with funds under Part B of the Act for eligible handicapped children enrolled in private schools may not include: (1) The payment of salaries of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control; or (2) The construction of private school facilities. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.457	Equipment. (a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency. (b) In exercising administrative control, the public agency shall keep records of and account for the equipment, and shall insure that the equipment is used solely for the purposes of the program or project, and remove the equipment from the private school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.458	Prohibition of segregation. Programs or projects carried out in public facilities, and involving joint participation by eligible handicapped children enrolled in private shcools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.459	Funds and property not to benefit private school. Funds provided under Part B of the Act and property derived from those funds may not inure to the benefit of any private school. (20 U.S.C. 1413(a)(4)(A).)
Sec. 121a.460	Existing level of instruction. Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private schools. (20 U.S.C. 1413(a)(4)(A).)

OFFICE OF EDUCATION PROCEDURES

Sec. 121a.580

Opportunity for a hearing.

The Commissioner gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under Sec. 121a.113 of Subpart B.

(b) Withholding payments from a State under Sec. 121a.590 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under Sec. 121a.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

Sec. 121a.581

Hearing panel.

The Commissioner appoints a Hearing Panel consisting of not less than three persons to conduct any hearing under Sec. 121a.530 of this subpart.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

Sec. 121a.582

Hearing procedures.

(a)(1) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity for presenting the case:

(i) In whole or in part in writing, or

(ii) In an informal conference before the Hearing Panel.

(2) The Hearing Panel shall give each party:

(i) Notice of the issues to be considered (if this notice has not already been given); and

(ii) An opportunity to be represented by counsel.

(b) If the Hearing Panel determines that oral testimony would materially assist the resolution of disputed facts, the Panel shall give each party, in addition to the requirements under paragraph (a)(2) of this section:

(1) An opportunity to obtain a record of the proceedings;

(2) An opportunity to present witnesses on the party's behalf; and

(3) An opportunity to cross-examine witnesses either orally or with written questions.

(20 U.S.C. 1232c(c); 1413(a)(9)(B); 1413(c); 1416.)

Sec. 121a.583

Initial decision; final decision.

(a) The Hearing Panel shall prepare an initial written decision which includes findings of fact and the conclusions based on those facts.

(b) The Hearing Panel shall mail a copy of the initial decision to each party (or to the party's counsel) and to the Commissioner, with a notice that each party has an opportunity to submit written comments regarding the decision to the Commissioner

CITATION	RULES AND REGULATIONS
	within a specified reasonable time. (c) The initial decision of the Hearing Panel is the final decision of the Commissioner unless, within 25 days after the end of the time for receipt of written comments, the Commissioner informs the Panel in writing that the decision is being reviewed. (d) Review by the Commissioner is based on the decision, the written record, if any, of the Hearing Panel's proceedings, and written comments or oral arguments by the parties. (e) No decision under this section becomes final until it is served on the State educational agency or its attorney. (20 U.S.C. 1232c(c); 1413(a)(9)(b); 1413(c); 1416.)
Sec. 121a.589	Waiver of requirement regarding supplementing and supplanting with Part B funds. (a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local Educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of the State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See Sec. 121a.372.) (b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Commissioner concurs with the evidence provided by the State. (c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner then provides the State with a finance and membership report form which provides the basis for the request. (d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas: (1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and (2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and (3) The adequacy of the State's due process procedures. (e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing under Secs. 121a.580-121a.583 with regard to any final action by the Commissioner under this section.
(20 U.S.C. 1411(c)(3); 1413(a)(9)(B).)

STATE ADVISORY PANEL

Sec. 121a.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in Sec. 121a.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.
(20 U.S.C. 1413(a)(12).)

Sec. 121a.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.
(2) Teachers of handicapped children.
(3) Parents of handicapped children.
(4) State and local educational officials.
(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.
(20 U.S.C. 1413(a)(12).)

Comments. The membership of the State advisory panel, as listed in paragraphs (a)(1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

Sec. 121a.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(20 U.S.C. 1413(a)(12).)

Sec. 121a.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

CITATION | RULES AND REGULATIONS

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under Sec. 121a.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for attending meetings and performing duties. The State may use funds under Sec. 121a.620 for this purpose.

(20 U.S.C. 1413(a)(12).)

LEGISLATION

WITHHOLDING AND JUDICIAL REVIEW

20 USC 1416
Sec. 616

Sec. 616. (a) Whenever the Commissioner, after reasonable notice and opportunity for hearing to the State educational agency involved (and to any local educational agency or intermediate educational unit affected by any failure described in clause (2), finds-

(1) that there has been a failure to comply substantially with any provision of section 612 or section 613, or

(2) that in the administration of the State plan there is a failure to comply with any provision of this part or with any requirements set forth in the application of a local educational agency or intermediate educational unit approved by the State educational agency pursuant to the State plan,

the Commissioner (A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and (B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within his jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children. If the Commissioner withholds further payments under clause (A) or clause (B) he may determine that such withholding will be limited to programs or projects under the State plan, or portions thereof, affected by the failure, or that the State educational agency shall not make further payments under this part to specified local educational agencies or intermediate educational units affected by the failure. Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in clause (1) or clause (2), no further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) within his jurisdiction to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children, or payments by the State educational agency under this part shall be limited to local educational agencies and intermediate educational units whose actions did not cause

CITATION — LEGISLATION

or were not involved in the failure, as the case may be. Any State agency, local educational agency, or intermediate educational unit in receipt of a notice pursuant to the first sentence of this subsection shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency or unit.

(b)(1) If any State is dissatisfied with the Commissioner's final action with respect to its State plan submitted under section 613, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1416) Enacted November 29, 1975 P.L. 94-142, sec. 5(a) 89 Stat 789, 790.

RULES AND REGULATIONS

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

Sec. 121a.506 — Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in Sec. 121a.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416(b)(2).)

CONFIDENTIALITY OF INFORMATION

Sec. 121a.590

Withholding payments.

(a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under Secs. 121a.580-121a.583 to the State educational agency involved (and to any local educational agency affected by any failure described in paragraph (a)(2) of this section):

(1) That there has been a failure to comply substantially with the provisions of section 612 and 613 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application of a local educational agency approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) of this section, the Commissioner:

(1) Shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

(2) May, after notifying the State educational agency, withhold further payments to the State under the Federal programs referred to in Sec. 121a.139 of Subpart B which are within his jurisdiction, to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children.

(c) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or projects under the annual program plan, or portions of it, affected by the failure, or

(2) That the State educational agency must not make further payments under Part B of the Act to specified local educational agencies affected by the failure.

(20 U.S.C. 1416(a).)

Sec. 121a.591

Reinstating payments.

Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in Sec. 121a.590(a):

(a) No further payments shall be made to the State under this part or under the Federal programs specified in section 613(a)(2) of the Act which are within his jurisdiction to the extent that funds under those programs are available for the

CITATION	RULES AND REGULATIONS
	provision of assistance for the education of handicapped children, or (b) Payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure. (20 U.S.C. 1416(a).)
Sec. 121a.592	Public notice by State and local educational agencies. Any State educational agency and local educational agency which receives a notice under Sec. 121a.590(a) shall by means of a public notice, take any necessary measures to inform the public within the agency's jurisdiction of the pendency of the action. (20 U.S.C. 1416(a).)
Sec. 121a.593	Judicial review of Commissioner's final action on annual program plan. If any State is dissatisfied withthe Commissioner's final action with respect to its annual program plan submitted under Subpart B, the State may under section 616(b) of the Act, within sixty days after notice of the action, file a petition for review of that action with the United States Court of Appeals for the circuit in which the State is located. (20 U.S.C. 1416(b).)

	LEGISLATION
	ADMINISTRATION
20 USC 1417 Sec. 617	Sec. 617. (a)(1) In carrying out his duties under this part, the Commissioner shall- (A) cooperate with, and furnish all technical assistance necessary, directly or by grant or contract, to the States in matters relating to the education of handicapped children and the execution of the provisions of this part; (B) provide such short-term training programs and institutes as are necessary; (C) disseminate information, and otherwise promote the ecucation of all handicapped children within the States; and (D) assure that each State shall, within one year after the date of the enactment of the Education for All Handicapped Children Act of 1975, provide certification of the actual number of handicapped children receiving special education and related services in each State.

CITATION | LEGISLATION

(2) As soon as practicable after the date of the enactment of the Education for All Handicapped Children Act of 1975, the Commissioner shall, by regulation, prescribe a uniform financial report to be utilized by State educational agencies in submitting plans under this part in order to assure equity among the States.

(b) In carrying out the provisions of this part, the Commissioner (and the Secretary, in carrying out the provisions of subsection (c)) shall issue not later than January 1, 1977, amend, and revoke such rules and regulations as may be necessary. No other less formal method of implementing such provisions is authorized.

(c) The Secretary shall take appropriate action, in accordance with the provisions of section 438 of the General Education Provisions Act, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Commissioner and by State and local educational agencies pursuant to the provisions of this part.

(d) The Commissioner is authorized to hire qualified personnel necessary to conduct data collection and evaluation activities required by subsections (b), (c), and (d) of section 618 and to carry out his duties under subsection (a)(1) of this subsection without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates except that no more than twenty such personnel shall be employed at any time.

(20 U.S.C. 1417) Enacted November 29, 1975, P.L. 94-142, sec. 5(a), 89 Stat. 791.

RULES AND REGULATIONS

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

Sec. 121a.3 General provisions regulations.

Assistance under Part B of the Act is subject to Parts 100, 100b, 100c, and 121 of this chapter, which include definitions and requirements relating to fiscal, administrative, property management , and other matters.
(20 U.S.C. 1417(b).)

Sec. 121a.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
(20 U.S.C. 1417(b).)

CITATION	RULES AND REGULATIONS
Sec. 121a.12	Qualified. As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services. (20 U.S.C. 1417(b).)
	DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN
Sec. 121a.500	Definitions of "consent", "evaluation", and "personally identifiable". As used in this part: "Consent" means that: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. "Evaluation" means procedures used in accordance with Secs. 121a.530-121a.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class. "Personally identifiable" means that information includes: (a) The name of the child, the child's parent, or other family member; (b) The address of the child; (c) A personal identifier, such as the child's social security number or student number; or (d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty. (20 U.S.C. 1415, 1417(c).)
	REPORTS
Sec. 121a.752	Annual report of children served-certification. The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question. (20 U.S.C. 1411(a)(3); 1417(b).)

258-056 O - 78 - 25

CITATION	RULES AND REGULATIONS
Sec. 121.753	Annual report of children served-criteria for counting children. (a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either: (1) Provides them with both special education and related services; or (2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education. (b) The State educational agency may not include handicapped children in its report who: (1) Are not enrolled in a school or program operated or supported by a public agency; (2) Are not provided special education that meets State standards; (3) Are not provided with a related service that they need to assist them in benefitting from special education; (4) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1965, as amended; or (5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under Sec. 121a.186(b) of Subpart B. (20 U.S.C. 1411(a)(3); 1417(b).)
Sec. 121a.754	Annual Report of children served-other responsibilities of the State educational agency. In addition to meeting the other requirements in this subpart, the State educational agency shall: (a) Establish procedures to be used by local educational institutions in counting the number of handicapped children receiving special education and related services; (b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with Sec. 121a.750(a); (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made; (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and (e) Insure that documentation is maintained which enables the State and the Commissioner to audit the accuracy of the count. (20 U.S.C. 1411(a)(3); 1417(b).)

CITATION	LEGISLATION

COMPREHENSIVE EMPLOYMENT TRAINING ACT OF 1973

(Conditions For Receipt of Financial Assistance)

29 USC 815
Sec. 105

Sec. 105. (a) The secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor submits a comprehensive manpower plan, in such detail as the Secretary deems necessary, which-

(1) sets forth a comprehensive manpower program which meets the objectives of this title, including

(A) a description of the services to be provided, and performance goals,

(B) assurance that such services will be administered by or under the supervision of the prime sponsor,

(C) a description of the geographical areas to be served under the plan, and

(D) assurances that to the maximum extent feasible manpower services, including the development of job opportunities, will be provided to those most in need of them, including low-income persons and persons of limited English-speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons;

(2) provides, in the case of prime sponsors who are recipients of funds under title II for the development of a public service employment program, that it is fully integrated with the services under this title in order to assure that persons employed in such a program are afforded a better opportunity to find regular employment not supported under this Act;

(3)(A) provides appropriate arrangements with community-based organizations serving the poverty community, and other special target groups for their participation in planning of programs included in the plan;

(B) provides for utilizing those services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State, and local agencies to the extent deemed appropriate by the prime sponsor, after giving due consideration to the effectiveness of such existing services and facilities, including, but not limited to, the State employment service, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions and organizations (such as private businesses, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more

CITATION	LEGISLATION

quickly unemployment or current and prospective manpower shortages;

(C) provides that in making arrangements for institutional training priority shall be given (to the extent feasible) to the use of skills centers established under the authority of section 231 of the Manpower Development and Training Act of 1962;

(D) provides arrangements to the extent feasible for the coordination of services for which financial assistance is provided under programs administered by the Secretary of Labor relating to manpower and manpower-related services;

76 Stat. 30.
42 USC 2601

(4) provides for paying the allowances and compensation provided by section 111;

Post.
p. 849.

(5) provides that any transitional public service employment programs meet the requirements of section 205(c) and section 208, and that persons hired to fill jobs created by such programs will be residents of the areas described under paragraph (1)(C) of this subsection;

(6) provides assurances that programs of institutional training be designed for occupations in which skill shortages exist and assurances that such programs and training on the job shall, wherever possible, result in employment which provides economic self-sufficiency;

(7) contains such information, assurances, statements, and arrangements consistent with the provisions of this Act as the Secretary shall prescribe by regulation including provisions designed to assist the Secretary in carrying out his special responsibilities under this section and section 108.

(b) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor certifies that-

(1) its plan meets all the requirements of this section; and

(2) it will comply with all provisions of this Act.

(c) The Secretary shall provide financial assistance to each prime sponsor under this title to carry out the plan submitted by each such prime sponsor upon determing that-

(1) the plan is consistent with the provisions of this title;

(2) the plan was made public prior to submission to the Secretary;

(3) the prime sponsor has demonstrated maximum efforts to implement the provisions in the prior year's plan.

Sec. 95.14 Content and description of grant application

(a) General.

(1) This section describes the grant application which prime sponsor applicants will use to apply for their grant allotment of funds under Title I of the Act. A single grant document may be provided by the RA for obtaining funds under Titles I and II. Such a document shall contain all the requirements set out for such grants in these regulations. Procedures for special State grants under Title I are in Subpart D of this Part 95 (sec. 105).

(2) Copies of all forms and instructions are contained in the Forms Preparation Handbook. The specific details of requirements of these forms are included in the Handbook.

(b) Grant application forms-

(1) Application for Federal Assistance. The Application for Federal Assistance identifies the applicant and the amount of funds requested; it provides information concerning the area to be served and the number of people expected to benefit from the program. Standard Form 424 contained in FMC 74-7 is being used.

(2) Title I Comprehensive Manpower Plan. The Title I Comprehensive Manpower Plan consists of the Narrative Description of the Title I Program, the Program Planning Summary, Budget Information Summary, and Occupational Summary, all described below. For consortia the approved consortium agreement shall be a part of the plan.

(i) Narrative Description of Title I Program. The Narrative Description of the Title I Program provides for a narrative outline of the proposed program under the Act. It identifies and explains the manpower problems within the applicant's jurisdiction, describes proposed program activities and delivery systems to deal with those problems, and projects the results which may be expected from the program. The Narrative Description of the Title I Program requires a detailed statement on the program including the following items. The Forms Preparation Handbook gives detailed instructions for these items required in the Narrative Description of the Title I Program.

(A) Objectives and Needs for the Assistance.

(1) Program Purpose.

(2) Analysis of Needs.

(i) A brief description of the geographic area to be served.

(ii) A description of the economic condition of the area.

(iii) A description of the labor force in the area to be served.

(iv) An assessment of job opportunities in the area.

(v) A description of the population groups or significant segments which are most in need of services.

(B) Results and Benefits Expected.

(1) A statement of the specific client, training, and ocupational goals and objectives the prime sponsor intends to accomplish.

(2) A discussion of the planned placement goals as well as a description of the placement and follow-up mechanisms and procedures to be used.

(C) Approach.

(1) Program Activities and Services.

(i) A statement of the reasons for the selection of activities and services to be provided.

(ii) A description of the activities and services to be provided.

(iii) A description of the recruitment and selection methods to be used.

(iv) A description of the participant flow and the relationship among the activities to be provided.

(v) A description of the special consideration that will be given to the needs of eligible disabled veterans, special veterans, and veterans who served in the Armed Forces and received other than a dishonorable discharge within 4 years before the date of their application.

(vi) For newly eligible prime sponsors, prime sponsors operating independently for the first time, and prime sponsors serving geographical area(s) in addition to that served in the previous program year, a description of the continuity of service to be provided.

(2) Delivery Agents.

(i) An explanation of the methods and criteria to be used in the selection of deliverers of service.

(ii) A discussion of the consideration given to continued funding of programs of demonstrated effectiveness.

(3) Discussion of PPS and BIS.

(i) An explanation of the participant enrollment data on the PPS.

(ii) An explanation of how costs were determined for BIS.

(4) Linkages.

(i) A description of the method used to identify other programs which provide manpower and related supportive services within the prime sponsor's jurisdiction.

(ii) A description of the linkages established.

(5) Prime Sponsor Planning.

(i) A list of the members of the planning council.

(ii) A description of the role and procedures of the planning council.

(iii) A description of the staff support of the council.

(iv) A description of the participation of community based organizations and groups in the program plan.

(D) Management and Administrative Plan.

(1) Organizational Structure. A description of the prime sponsor's organizational structure.

(2) Administrative Controls. A description of the internal administrative controls including:

(i) accounting system;

(ii) fiscal reporting and participant tracking system(s);

(iii) monitoring system;

(iv) evaluation system;

(v) personnel or merit system;

(vi) property management procedures.

(3) Allowance Payments. A description of the details of the allowance payments system.

(4) Unemployment Insurance. A description of the provisions for payment of unemployment compensation, as applicable.

(5) Grievance Procedures. A description of the procedures for resolving an issue between the prime sponsor and a participant, contractor, or subgrantee prior to the Department's hearings process.

(6) Equal Employment Opportunity. A description of the mechanisms which will be used to assure nondiscrimination and equal employment opportunities.

(E) Public Service Employment Program.

(1) Description of Unmet Public Service Needs.

(2) Results and Benefits Expected.

(i) A statement of specifc participant and occupational goals.

(ii) An explanation of how the public service employment program is integrated with other activities and services.

(iii) A discussion of the placement goals as well as a discussion of the placement and follow-up mechanisms and procedures to be used.

(3) Approach.

(i) A description by employing agency of the types of jobs to be funded including:

(A) An explanation of how these jobs relate to the target group needs identified above;

(B) An explanation of how these jobs relate to the public service needs identified above;

(C) A description of determination of rates of compensation when they differ from what is normally paid by the employer;

(D) A description of actions to insure compliance with personnel procedures and collective bargaining agreements for jobs in other than the entry level;

(E) A description of the education, training, and supportive services to participants;

(F) A maintenance of effort verification;

(G) A description of the training for supervisory personnel;

(H) A description of efforts to remove artificial barriers; and

(I) A description of plans to improve and expand employment and advancement opportunities of the target population.

(ii) A narrative explanation for the basis of funding and job allocation to each local government and agency.

(iii) A description of the recruitment and selection methods to be used.

(iv) A description of the specific steps to be undertaken to provide consideration to special veterans, disabled veterans, those veterans who have received other than a dishonorable discharge within 4 years prior to application, welfare recipients, and former manpower trainees.

(v) A description of the emphasis which will placed on the development of jobs for veterans which will utilize skills acquired through their military experience.

(ii) Program Planning Summary. The Program Planning Summary requires a prime sponsor to provide a quantitative statement of planned enrollment levels, the participants to be served by each program activity (classroom training, on-the-job training, public service employment, work experience, and other activities) and outcomes for program participants. It also requires an identification of the significant segments of the population and the number of individuals to be served in each.

(iii) Budget Information Summary. The Budget Information Summary requires a prime sponsor to provide a quantitative statement of planned expenditures and obligations by the grantee. It requires prime sponsors to indicate yearly planned expenditures and obligations by the grantee. It requires prime sponsors to indicate yearly planned expenditures by cost category (administration, allowances, wages, fringe benefits, training, and services); the prime sponsor is to reflect planned quarterly obligations, and planned quarterly expenditures by program activity.

(iv) Public Service Employment Occupational Summary. The Public Service Employment Occupational Summary requires a prime sponsor operating a public service employment program under the Act to provide a description of proposed job opportunities, occupations and wages, including a comparison of such wages with wages for similar nonsubsidized jobs in the employing agency.

(3) Assurances and Certifications. The Assurances and Certifications form is a signature sheet on which the prime sponsor assures and certifies that it will comply with the Act, the regulations of the Department, other applicable laws, and applicable Federal Management Circulars and Office of Management and Budget (OMB) circulars. The Assurances and Certifications form appears in the Forms Preparation Handbook. Following is a summary of the items which are described in detail on that form:

(i) General Assurances:

(A) Compliance with the Act and regulations, including conformance to amendments;

(B) Compliance with FMC 74-4 and 74-7 and OMB Circular A-95;

(C) Legal authority to apply for the grant (secs. 102(a), 701(a) (9) and (10);

(D) Compliance with Title VI of the Civil Rights Act of 1964;

(E) Non-discrimination (secs. 703(1) and 712);

(F) Compliance with the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (FMC 74-7);

(G) Compliance with the Hatch Act as amended and restrictions on political activities (sec. 710);

(H) Prohibition on use of position for private gain (sec.702(a);

(I) Access of Comptroller General and Secretary to records and documents pertaining to the Act (secs 713(2));

(J) Non-support of religious facilities (sec.703(4);

(K) Maintenance of required health and safety standards (sec.703(5));

(L) Provision of appropriate employment and training conditions in regard to type of work, geographical region and proficiency of the participant (sec. 703(4));

(M) Provision of workmen's compensation protection to participants in on-the-job training, work experience, or public service employment programs under the Act at the same level and to the same extent as other employees of the employer who are covered by a State or industry workmen's compensation statute; and provision of workmen's compensation insurance or medical and accident insurance for injury or disease resulting from their participation to those individuals engaged in any program activity under the Act, i.e., work experience, on-the-job training, public service employment, classroom training, services to participants, and other activities, where others similarly engaged are not covered by an applicable workmen's compensation statute (secs. 703(6) and 208(4));

(N) Use of funds under the Act to supplement, rather than supplant funds otherwise available, prohibition on displacement of employed workers by participants employed under the Act, and prohibition on impairment of existing contracts for services (secs. 703(11) and 703(7));

(O) Training only in occupations which require two or more weeks of pre-employment training, unless these are immediate employment opportunities (secs. 703(8), and 105(a)(6));

(P) Training which has a reasonable expectation to lead to unsubsidized employment and which provides for the development of participants' potential consistent with their capabilities (secs. 703(9), 105(a)(6), and 703(10));

(Q) Use of funds to supplement rather than supplant the level of funds otherwise available for the planning and administration of the program (sec. 703(11));

(R) Compliance with reporting and recordingkeeping requirements of the Act and regulations (secs. 703(12) and 311(c);

(S) Contribution to the occupational development or upward mobility of individual participants (sec. 703(13));

(T) Provision of required administrative and accounting controls (sec. 703(14));

(U) Provision for the manpower needs of youth in the area served (sec. 703(15))

(V) Compliance with minimum wage requirements specified under the Act (secs. 111(a) and (b) and 208(a)(2));

(W) Compliance with applicable labor standards pertaining to the worksite or training facility (sec.111(b) and 706);

(X) Services and activities provided under this Act will be administered by or under the supervision of the applicant (sec. 105(a)(1)(B);

(Y) No funds shall be used for lobbying activities in violation of 18 USCA 1913.

(Z) Compliance with Department of Treasury Regulations found at 31 CFR 205.

(AA) Compliance with the provisions in the Clean Air Act and Federal Water Pollution Control Act.

(ii) Additional assurances for Title I programs, as required by the Act:

(A) Provision of manpower services to those most in need of them, and consideration of the need for continued funding of programs of demonstrated effectiveness to serve them (sec. 105(a)(1)(D));

(B) Design of programs of institutional skill training for skill shortage occupations (sec.105(a)(6));

(C) Submission of a comprehensive plan in accordance with the provisions of section 105(a) and compliance with the provisions of section 105(b);

(D) Arrangements to assist the Secretary in carrying out his responsibilities under sections 105 and 108 of the Act (sec.105(a)(7));

(E) Special consideration given to the needs of unemployed disabled veterans, special veterans and veterans discharged within four years of the date of application and special outreach and coordination efforts to serve such veterans (secs. 205(c)(5), 205(c)(26) and 104(b) of the Emergency Jobs and Unemployment Assistance Act of 1974 (P.L. 93-567));

(iii) Additional assurances relating to public service employment programs as follows:

(A) Special consideration be given to the filling of jobs which provide prospects for advancement or continued employment by providing complementary training and manpower services in accordance with procedures established in section 205(c)(4);

(B) Provision of public service jobs, to the extent feasible, in occupational fields most likely to expand within the public or private sector as the unemployment rate recedes (sec. 205(c)(6));

(C) Special consideration in filling transitional public service jobs be given to persons most severely disadvantaged in terms of length of unemployment and prospects for finding employment unassisted, but not authorized the hiring of any person when another person is on lay-off from the same or equivalent job (sec.205(c)(7));

(D) Prohibition against the use of funds to hire any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any other regular employee not supported under the Act in anticipation of filling such vacancy by hiring an employee to be supported under the Act (sec. 205(c)(8));

(E) Consideration of persons who have participated in manpower training programs (sec. 205(c)(9));

(F) Compliance with periodic review procedures pursuant to section 207(a) of the Act (sec.205(c)(17));

(G) Removal of artificial barriers to public employment by agencies and institutions receiving financial assistance and contributing, to the maximum extent feasible, to the elimination of artificial barriers to employment and occupational advancement (secs. 205(c)(18) and 205(c)(21));

(H) Maintenance or provision of linkages with upgrading and other manpower programs to assist persons employed in public employment programs to fulfill their career goals (sec. 205(c)(19));

(I) Employment of not more than one-third of the participants in a bona fide professional capacity except in the case of classroom teachers; the Secretary may waive this limitation in exceptional circumstances (sec.205(c)(22));

(J) Allocation of jobs equitably to local governments and agencies (sec. 205(c)23));

CITATION | RULES AND REGULATIONS

(K) Provisions of jobs in each job category which will not infringe upon the promotional opportunities of unsubsidized current employees and provision of jobs only at the entry level in each job category until applicable personnel procedures and collective bargaining agreements have been met (sec. 205(c)(24));

(L) Provision of jobs in addition to those that would otherwise be funded by the prime sponsor without assistance under the Act (sec. 205(c)(25));

(iv) Special certification for State grantees: Compliance with requirements and provisions of sections 106 and 107 of the Act.

(4) Grant Signature Sheet. The Grant Signature Sheet records the acceptance by the grantee and grantor of the terms and conditions of the grant and any changes to the grant. It records the time period for which the grant is effective, the grant allotment, the amount of funds obligated by the RA to the grantee, the title of the act under which the funding is authorized and the name, title and signature of the approving official on both sides.

CITATION | LEGISLATION

STATE MANPOWER SERVICES COUNCIL

29 USC 817
Sec. 107

Sec. 107. (a)(1) Any State which desired to be designated as a prime sponsor and to enter into arrangements with the Secretary under this title shall establish a Manpower Services Council (hereinafter referred to as the "Council" which shall exercise the powers and duties set forth in this section.

(2) The Council established pursuant to paragraph(1) shall-

(A) be appointed by the Governor (who shall designate one member thereof to be Chairman), and shall be composed of-

(i) representatives of the units or combinations of units of general local government in such State, who shall comprise at least one-third of the membership of the Council, which have comprehensive manpower plans approved under section 108 (except that the initial appointments to the Council may consist of representatives of units or combinations of units of general local government described in clauses(2),(3),(4), and (5) of section 102(a) which have indicated an intention to submit a plan for approval under section 108), and such representatives shall be designated by the chief executive officers of the units or combination of units of general local government which qualify for representation under this section in accordance with procedures agreed upon by such chief executive officers;

(ii) one representative each of the State board of vocational education and the public employment service of such State;

(iii) one representative of the State Advisory Council on Vocational Education created pursuant to section 105 of the Vocational Education Act of 1963;

(iv) one representative of each such other State agency as the Governor may determine to have a direct interest in overall manpower training and utilization within the State;

(v) representatives of organized labor;

(vi) representatives of business and industry;

(vii) representatives of community-based organizations and of the client community to be served under this Act (including, where persons of limited English-speaking ability represent a substantial portion of the client population, appropriate representation of such persons); and

(viii) representatives of the general public.

(B) be appropriately staffed and serviced by the State prime sponsor;

(C) meet at such times and in such places as it deems necessary.

(b) The Council shall-

(1) review the plans of each prime sponsor and the plans of State agencies for the provision of services to such prime sponsors, and make recommendations to such prime sponsors and agencies for the more effective coordination of efforts to meet the overall manpower needs of the State;

(2) continuously monitor the operation of programs conducted by each prime sponsor, and the availability, responsiveness, and adequacy of State services, and make recommendations to the prime sponsors, to agencies providing manpower services, and to the Governor and the general public with respect to ways to improve the effectiveness of such programs or services in fulfilling the purposes of this Act;

(3) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist prime sponsors or to otherwise help carry out the purposes of this Act.

(4)(i) identify, after consultation with the State Advisory Council on Vocational Education, the employment and training and vocational education needs of the State and assess the extent to which employment training, vocational education, vocational rehabilitation, special education, and other programs assisted under this and related Acts re represent a consistent, integrated, and coordinated approach to meeting such needs; and

(ii) comment at least once annually, on the reports of the State Advisory Council on Vocational Education, which comments shall be included in the annual report submitted

CITATION	LEGISLATION
	by the Council pursuant to this section and in the annual report submitted by the State Advisory Council pursuant to section 105 of the Vocational Education Act of 1963.

CITATION	RULES AND REGULATIONS
Sec. 95.13	Planning process; advisory councils (a) General. An applicant for financial assistance shall submit an approvable Comprehensive Manpower Plan, as set out in Sec. 95.14. In developing and modifying such a plan, an applicant shall utilize the advisory councils set out in this section (sections 104, 105, and 107). (b) Planning process. (1) The prime sponsor shall have a planning process for the development of its Comprehensive Manpower Plan. That process shall utilize, as appropriate, the advisory councils established in this section and shall also assure the participation in program planning of community-based organizations and the population to be served. (2) In planning the methods for providing services that will be funded under the Act, the prime sponsor shall review existing services and facilities in the community and give due consideration to the utilization of these facilities which are available from Federal, State, and local agencies, including community-based organizations. In reviewing the existing services and facilities, consideration shall be given to the costs, responsiveness, adequacy, and effectiveness of each agency's services to assure that unnecessary duplication has been avoided. (c) Prime sponsor Manpower Planning Council. (1) Each prime sponsor shall appoint a Manpower Planning Council representative of the geographic area to be served. The Planning Council function is advisory. The Council's advisory authority does not free the prime sponsor from its final decision-making responsibilities under the Act. (2) The Planning Council shall advise the prime sponsor in the setting of basic goals, policies, and procedures for its program under Title I and Title II of the Act. It shall make recommendation regarding program plans, and provide for continuing analyses of needs for employment, training and related services in such areas. Planning Councils shall monitor all manpower programs funded under Title I and Title II of the Act and provide for objective evaluation of other manpower and related programs operating in the prime sponsor's areas, for the purpose of improving the utilization

and coordination of the delivery of such services. The procedures for evaluating programs not funded under Title I and Title II of the Act will be developed in cooperation with the agencies affected. The Planning Council shall make recommendations based upon its analyses to the prime sponsor, which will consider them in the content of its overall decision-making responsibility.

(3) Each prime sponsor shall, to the extent practical, include as appointments to its Planning Council members who are representative of the participant community (e.g., women, persons of limited English-speaking ability and other minority groups) and of community-based organizations, the SESA, education and training agencies and institutions, business (e.g., representatives of a locally-based business firm, the National Alliance of Businessmen or Chamber of Commerce) organized labor, and where appropriate, agriculture. Generally, staff of State or local government agencies would not provide appropriate representation of the participant community their agency serves. Persons representative of other interested groups may also be appointed. The prime sponsor shall appoint a chairperson of the Planning Council and provide professional, clerical, and technical staff to serve it. Funds for supportive services and related staff costs for the Planning Council may be made available from a prime sponsor's basic allocation.

(4) No member of the Planning Council shall cast a vote on any matter which has direct bearing on services to be provided by that member (or any organization with which that member is associated).

(d) State Manpower Services Council.

(1) A State prime sponsor shall establish, in addition to its Planning Council under paragraph (c), a State Manpower Services Council (SMSC) representative of the geographic area to be served. The SMSC function is advisory and does not relieve the State of its final decisionmaking responsibilities under the Act.

(2) Consistent with the requirements of Section 107 of the Act, the Governor shall appoint Council members, as follows:

(i) At least one-third of the membership of the Council shall be composed of representatives of prime sponsors who have been designated in accordance with procedures agreed upon by the chief executive officers of such prime sponsors. (All prime sponsors within the State need not be represented; whatever the size of the Council, one-third of its membership shall be representatives of prime sponsors within the State).

(ii) One representative shall be appointed from each of the following: the State Board of Vocational Education, the State Employment service, and any State agency the Governor believes has an interest in manpower or manpower-related services within the State.

(iii) Representatives shall be appointed from organized labor, business and industry, the general public, community-based organizations, and from the population to be served under the Act (including representation of women, persons of limited English-speaking ability, and other minority groups when such persons represent a significant portion of the participant population). Generally, staff of State or local government agencies would not provide appropriate representation under this paragraph.

(3) The Governor shall appoint a chairman for the Council and provide the Council with professional, technical, and clerical staff. The Council shall meet as it deems necessary.

(4) Council responsibilities shall include, but not be limited to:

(i) Reviewing prime sponsor plans, proposed modifications, and comments thereon;

(ii) Reviewing State agency plans for providing services to prime sponsors;

(iii) Making recommendations to prime sponsors, agencies providing manpower services, the Governor, and the general public on improving the coordination and effectiveness of manpower services within the State;

(iv) Monitoring continuously

(A) the operation of programs conducted by prime sponsors in the State and

(B) the availability, responsiveness, adequacy, and effective coordination of State services provided by all manpower-related agencies. The monitoring conducted by SMSC's shall include an emphasis upon reviewing statewide and inter-prime sponsor issues of utilization and coordination of manpower resources of State agencies, and the coordination of plans and operations in contiguous areas. The extent and procedures for monitoring prime sponsors and State agencies must be defined by the SMSC and publicized to all prime sponsors and State agencies affected prior to their being implemented; and

(v) Submitting an annual report to the Governor which will be a public document, and issuing such other studies, reports or documents to the Governor and prime sponsors as the SMSC believes necessary to effectively carry out the Act. This report shall be submitted no later than 90 days after the end of the Federal fiscal year.

(e) Combined planning and services councils. In any State where the State is the only prime sponsor, the prime sponsor planning council may also perform the functions of the State Manpower Services Council. In such instances, the membership of the prime sponsor's planning council shall reflect the membership requirements of the State Manpower Services Council, in addition to meeting the membership requirements of a prime

CITATION	RULES AND REGULATIONS
	sponsor planning council, except that the provision of Sec. 95.13 (d)(2)(i) is not required.
	LEGISLATION
29 USC 822 Sec. 112	SUPPLEMENTAL VOCATIONAL EDUCATION ASSISTANCE Sec. 112.(a) From the funds available to him for this section, the Secretary shall make grants to Governors to provide financial assistance, through State vocational education boards, to provide needed vocational education services in areas served by prime sponsors. (b) All of the sums available to carry out this section shall be allotted among the States on the manner provided for allotting funds under section 103(a). (c) Funds available under this section shall be used only for providing vocational education and services to participants in programs under this title in accordance with an agreement between the State vocational education board and the prime sponsor.
	RULES AND REGULATIONS
Sec.95.50	Subpart D - Special Grants to Governors General (a) Funds shall be allocated to each State through a special grant for the support of: (1) Vocational education services for prime sponsors; (2) The State Manpower Services Council; and (3) State manpower services. (b) Funds available under paragraph (a) shall be granted for each Governor in accordance with the formula allocation set out in sec. 95.2 of these regulations. Each Governor shall distribute these funds as provided in sec. 95.55. (secs. 103, 106, 107, and 112). (c) Provisions generally applicable in parts 94 through 99 subpart unless otherwise provided.
Sec.95.51	Distribution of funds (a) Five percent of the funds available under Title I of the Act shall be allocated to the Governors of the States to provide needed vocational education and services for prime sponsors through State Vocational Education Boards as set out in sec.95.2. These services are to be provided to participants enrolled in Title I programs in prime sponsor areas.

(b) State Manpower Services Councils shall be supported with funds as set forth in sec. 95.2(b)(2).

(c) State manpower services provided under Section 106 of the Act shall be funded as set forth in sec. 95.2 (c)(2).

Sec. 95.52 Grant Application

(a)(1) Upon notification by the Secretary of the amount of funds available for a special grant to the State, the Governor shall submit a Special Grant Application to the RA on a date set by the Secretary. Copies of all forms and instructions for application for Special Grants are contained in the Forms Preparation Handbook.

(b) The Special Grant Application shall contaim the following:

(1) Application for Federal Assistance. Standard Form 424 as prescribed by FMC 74-7 shall comply with the pre-application and comment and publication requirements specified in sec. 95.11 and sec. 95.15, except that in providing summaries of the grant application as specified Sec. 95.15(c) such summaries shall be provided to each prime sponsor in the State and to units of general local government within the Balance of State with a population of 25,000. The Governor shall also provide summaries to appropriate Indian sponsors and labor organizations as specified in Sec. 95.15(c).

(2) The Governor is being used for the application for the special grant.

(2) Special Grant Plan. This plan consists of:

(i) Special Grant-Program Planning Summary. The Special Grant-Program Planning Summary is a multiprogram form providing for statistical entries on numbers of participants served by vocational education projects and State Manpower Services.

(ii) Special Grant-Budget Information Summary. The Special Grant-Budget Information Summary is a multiprogram form providing for entries on funds planned to be obligated and expended in vocational education projects, State Manpower Services Council, and State manpower services.

(iii) Special Grant Program Narrative. The narrative for the special grant will be composed of three separate sections. The Program Narrative form contained in the Forms Preparation Handbook requires a detailed statement on the program including the following items:

(A) Vocational Education Services Program Narrative.

(1) An explanation of the method used to allocate funds to prime sponsor areas and the rationale for the method used;

(2) An explanation for any nonfinancial agreement which was not reached between a prime sponsor and Vocational Education Board;

(3) A summary of all agreements required in sec. 95.56 between individual prime sponsors and the State Vocational Education Board;

(4) A copy of each such agreement. The summary should follow the procedures established for the development of individual program narratives supporting each nonfinancial agreement. If all of the nonfinancial agreements are not available when the application is submitted, the Governor shall describe the training and services which he expects to be supplied by the State Vocational Education Board to each prime sponsor. Nonfinancial agreements received after the grant is made will be forwarded to the RA; and

(5) An explanation of administrative costs which exceed 20 percent.

(B) State Manpower Services Council Program Narrative.

(1) A listing of members of the Council, identifying the group each member represents;

(2) Identification of the chairman.

(3) A statement of the procedures which will be followed in reviewing prime sponsor plans and plans of State agencies and making recommendations which will provide more effective overall coordination of manpower services in the State;

(4) A description of the system to be used in monitoring other prime sponsors and State manpower services;

(5) A description of the types of data materials, and information which will be included in the annual report to the Governor;

(6) If the Governor plans to use part of the funds authorized for the Council under Section 103(d) of the Act (one percent of the allocation) for Section 106 (State services), the specific use of the funds shall also be described, including the amount of funds and objectives to be accomplished.

(7) A breakdown of staff and other council costs. This breakdown should include administration, wages, and fringe benefits.

(C) State Manpower Services Program Narrative.

(1) Explanation of steps taken to assure cooperation of State agencies with prime sponsors in implementing the program;

(2) Description of State plan for sharing of manpower resources and facilities for most efficient and economical operation;

(3) Coordination of programs financed under Wagner-Peyser Act to provide assistance to individuals in accordance with policies of this Act;

(4) An explanation of the arrangements made by the State to assist the Secretary in carrying out the Secretary's mandatory listing responsibilities under section 2012(a) of title 38 U.S. Code. Such arrangements shall be explained in the State Comprehensive Manpower Plan and shall relate

only to Federal contractors and subcontractors and should not be interpreted to include the grantee, subgrantees, or contractors under the Act;

(5) A description of any arrangements for planning areas (see Part V of Attachment A, OMB Circular A-95) to serve geographical regions within the State;

(6) A description of provisions for coordination of the manpower and related services to be provided by the State in areas to be served by prime sponsors other than the State, including the exchange of information and coordination of manpower plans;

(7) A description of any of the activities allowable under Section 106(c) of the Act, that the State chooses to provide, detailing those activities to be undertaken and the costs and goals of such activities, including:

(i) A description of allowable services being delivered under the Act throughout the State, by State agencies responsible for employment, training, and related services (sec. 106(c)(1));

(ii) A description of special programs and services for rural areas outside major labor market areas;(sec. 106(c)(2));

(iii) A description of the extent to which information will be developed and published regarding economic, industrial, and labor market conditions;

(iv) A description of information and technical assistance to be provided to prime sponsors in the State; and

(v) A description of any model training and employment programs.

(3) Assurances and certifications. The assurances and certifications form applicable to Title I and Title II grants shall be included in the special grant application and agreement.

(4) Special Grant to Governors Signature Sheet. The Special Grants to Governors Signature Sheet records the acceptance by the grantee and grantor of the terms and conditions of the grant and any changes to the grant. It records the time period of which the grant is effective, the grant allotment, and amount of funds obligated by the RA to the grantee, the section of the ACT (i.e., 103(c), 103(d), 103(e)) under which the funding is authorized and the name, title and signature of the approving official on both sides.

Sec.95.53 Application approval and disapproval; grant agreement.

(a) In reviewing the grant application, the RA shall utiliz tilize the standards specified in 95.17(a) and (b) (1), (4), (7), (8), (9), (10)k, (11), (12), and (13).

(b) The RA shall approve any grant application which meets the following standards and requirements;

(1) It contains all the required forms, information, and certificates required by the regulations;

(2) It meets the requirements of the Act, the regulations promulgated under the Act, other applicable law; and if the RA determines that the Governor has demonstrated maximum efforts to meet the goals of the prior year's plan.

(c) Section 95.18(c)(1) and (2) applies to grants funded under subpart D of this Part 95.

(d) If an application is approved, the RA shall provide the Governor with a grant agreement, consisting of the Special Grant to Governors Signature Sheet and an Assurances and Certifications Form and the Special Grant Plan which is included by reference. The Special Grant Plan shall be attached to the grant agreement.

(e) An application for a special grant shall be disapproved if it fails to meet any requirement of the Act, the regulations promulgated under the Act, or any other applicable law. All other conditions set forth in Sec. 95.10 shall apply to the disapproval of special grants.

(f) Upon approval, the Governor shall provide a summary of the Special Grant to each prime sponsor in the State.

Sec. 95.54 Modifications.

(a) Major modifications. (1) A major modification to a Governor's special grant is required under any of the following conditions:

(i) change in duration of the grant;

(ii) change in grant allotment;

(iii) change in the assurances and certifications;

(iv) substantial change in program design and/or program goals defined as follows:

(A) When the cumulative number of individuals to be served or the planned placement terminations is to be increased or decreased by 15 percent or more.

(B) When the cumulative transfer of funds among program activities or cost categories exceeds $50,000 or 15 percent of the total grant budget whichever is greater.

(C) When the program design is altered significantly (see Sec. 95.21(a)(1)(iv)(D)

(2) Major grant modifications shall not be initiated solely to adjust planned performance to meet actual performance.

(b) A-95 Clearance. (1) Modifications require (delete "d") clearance through the A-95 clearinghouse only under the following conditions:

(i) there is a cumulative increase or decrease in funds equal to or more than 15 percent of the grant allotment for the current program year and/or;

(ii) the term of the grant is extended for a period of more than 3 calendar months and/or;

(iii) the RA directs that A-95 clearance is required for a particular modification.

(2)(i) When A-95 clearance is required, the Governor, whenever possible, shall provide notification to the appropriate

A-95 State and areawide clearinghouses of its intent to modify its grant 60 days prior to submission of the formal modification to the RA. The notification of intent should consist of a revised form SF 424 and a brief description of the anticipated modification. If within 30 days from submission of such notification, the Governor receives no notification from the A-95 clearinghouses that they wish to review the modification, the Governor has fulfilled its obligation under A-95 and may submit the modification to the RA without submitting it to the A-95 clearinghouses as specified in paragraph (b)(2)(ii) of this section.

(ii) When the Governor has not provided notification as specified in paragraph (b)(2)(i) of this section or when the Governor has provided this notification and the clearinghouse(s) have requested to review the completed modification, the Governor shall in all cases submit a copy of its modifications to the clearinghouses for comment 30 days prior to its submission to the RA.

(iii) Where no comments have been received from A-95 clearinghouses or where the clearinghouses have not requested to review the completed modification, the Governor shall so indicate in the appropriate item on the revised SF 424, noting clearinghouses which sent no response after receiving the modification, and clearinghouses which did not request to review the completed modification after being notified of the Governor's intent to modify.

(c) Format. Modifications pursuant to paragraphs (a) and (b) above shall consist of the following:

(1) Revised Form SF 424 (if A-95 clearance is required);

(2) Revised Special Grant Program Planning Summary and Budget Information Summary for current and future quarters only; except that a modification not involving a change in the grant allotment must be received in the regional office within 30 days of the beginning of the current quarter in order to include changes to the current quarter goals.

(3) Revised Signature Sheet;

(4) Narrative description of the changes made and certification that the review and comment procedures in paragraph (d) have been complied with.

(5) A copy of the newspaper announcement required in paragraph (d).

(6) Revised portions of the program narrative description, if appropriate.

(d) Publication and Comment. (1) No later than the date of submission to the RA, the Governor shall provide a summary of any modification pursuant to paragraphs (a) and (b) above to each prime sponsor in the State and units of general local government within the Balance of State with a population of 25,000, to appropriate Indian sponsors, and to labor organizations representing employees engaged in similar work in the same area as that for which participants will receive subsidized employment or training; and the Governor shall publish in a minimum of one issue of a newspaper or newspapers (including minority newspaper(s), where feasible) of general circulation throughout the area to be served a notice of the intent to request a modification, and the location and hours when the complete modification can be reviewed and the phone number where questions and comments may be directed.

(2) Comments pursuant to paragraphs (b)(2)(ii) and (d)(1) shall be made to the Governor and the RA within 30 days of publication. All substantive written comments and responses shall be transmitted to the RA with the modification, unless comments are received after the modification's submission, in which case they shall be sent separately to the RA.

(3) The Governor shall acknowledge any written comment made pursuant to this section, and shall inform any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for such determination.

(e) Notification of Action. (1) The RA shall take final action on approval or disapproval of any proposed modification within 30 days of receipt. Within 7 days after taking action, the RA shall notify the Governor of the action.

(2) A denial of a Governor's request for a modification shall be subject to the appeal procedures set out in Part 98.

(3) The procedures in Sec. 95.18(c)(1) and (2) shall apply to modifications under paragraph (b) of this section.

(f) The procedures for incremental funding and minor modifications are the same as those specified in Sec. 95.21 of Subpart A.

Sec. 95.55 Governor's distribution of vocational education funds.

(a) Upon notification of the funds available to the State for vocational education, the Governor shall inform in writing the State Vocational Education Board and each prime sponsor of the amount of funds available to be spent in each prime sponsor's area and the methodology used to determine that amount. If a prime sponsor elects not to use all or part of the funds provided for its area, it shall notify the Governor who will redistribute the funds among other eligible prime sponsors.

(b) The Governor shall determine the amount of funds to be made available in each prime sponsor's area assuring that such funds do not increase by more than 20 percent the amount of funds available to that prime sponsor's area under the basic allocation formula set out in Sec. 95.2(b) (Sec. 103(c)).

Sec. 95.56 Program operations

(a) Vocational education services and activities. (1) The Governor shall provide vocational education funds received by special grant to the State Vocational Education Board as described in Sec. 95.55 of this Subpart D. The State Vocational Education

Board will then provide the training and services detailed in a nonfinancial agreement with the prime sponsor as described in Sec. 95.58 of this Subpart D. This agreement will be developed at the local level between prime sponsors and the State Vocational Education Board to provide vocational education and services which are consistent with provisions of the prime sponsors' comprehensive plan to participants enrolled in Title I programs in prime sponsor areas. This agreement will then be forwarded to the Governor, to become part of the special grant application which shall be submitted to the RA.

(2)(i) Vocational education services which may be provided by a State Vocational Education Board include, but are not limited to, basic or general education, educational programs conducted for offenders, institutional training, and supportive services as defined in Sec. 95.33(d)(5) or as authorized as supportive services in vocational education programs administered by a State Vocational Education Board. The services provided must be consistent with the provisions of the Act and regulations. Vocational education funds allocated under this Subpart D may also be utilized, as appropriate, for the payment of allowances to participants in vocational education training and for administrative costs incurred for the vocational education programs funded under the Act.

(ii) Vocational education funds allocated under this Subpart D shall not be used for activities to be carried out with the State manpower services funds or by the State Manpower Services Council.

(3) If no Vocational Education Board exists within a State, the Governor may provide financial assistance to an alternate agency which serves the same purpose as a State Vocational Education Board.

(b) State Manpower Services Council. (1) The Governor shall, from funds available under Sec. 95.2(b)(2), provide staff and other necessary services in support of the Manpower Services Council in performing its functions under Sec. 95.13(d).

(2) Funds for State Manpower Services Councils may be used for State manpower services to the extent such funds are not needed for this council.

(c) State manpower services. Funds provided under Sec. 95.2(c)(2) of these regulations are to be used for the following:

(1) Activities required to be performed by the State (sec. 106(b) are as follows:

(i) Assurance that the State agencies providing manpower and manpower-related services either independently or as subgrantees or contractors will cooperate with prime sponsors and eligible applicants in implementation of the program.

(ii) Development of methods for the sharing of resources and facilities in order to carry out manpower programs throughout the State. The administration of such programs will be designed to meet the needs of the area with minimum duplication and in the most efficient and economical manner.

(iii) Coordination of programs financed under the Wagner-Peyser Act in accordance with such rules, regulations, and guidelines as the Secretary determines necessary for the purpose of providing coordinated and comprehensive assistance to those individuals requiring manpower and manpower-related services to achieve their full occupational potential in accordance with the policies of the Act;

(iv) Arrangements made by the State to assist the Secretary in carrying out the Secretary's mandatory listing responsibilities under section 2012(a) of title 38 U.S. Code. Such arrangements shall be explained in the State Comprehensive Manpower Plan and shall relate only to Federal contractors and subcontractors and should not be intrepreted to include grantees, subgrantees or contractors under the Act (sec. 106(b)(5).

(v) Arrangements for any planning areas (see Part V of Attachment A, OMB Circular A-95, to service geographical regions within the State, including a description of the roles and responsibilities of the planning area with particular emphasis on the steps taken to assure that plans of all State agencies for delivery of services have been effectively coordinated.

(vi) Coordination of the manpower and related services to be provided by the State in areas to be serviced by prime sponsors other than the State, and that provison has been made for the establishment of mechanisms to (A) provide for the exchange of information between States and local governments on State, intrastate, and regional planning in areas such as economic development, education, and such other areas that may be relevant to manpower planning; and (B) promote the coordination of all manpower plans in a State so as to eliminate conflict, duplication, and overlapping between manpower services under the Act and manpower services provided under other statutory authority.

(2) Activities which may be provided at the option of the State (sec. 106(c)) are as follows:

(i) Provision of allowable services under the Act which are being delivered throughout the State by State agencies responsible for employment and training and related services;

(ii) The provision of financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(iii) Development and publication of information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupations, and economic and business development and location trends:

(iv) Provision, without reimbursement and upon request, to any prime sponsor serving an area within the State, of such information and technical assistance to assist any such prime sponsor in developing and implementing its programs under the Act; and

(v) Development of special model training and employment programs and related services, including programs for offenders similar to programs described in Section 301(c) of this Act.

(3) When using funds provided under 95.2(c)(2) for manpower activities (e.g., work experience, classroom training, public service employment), the requirements of Subpart C of Part 95, and of Part 96, as appropriate, apply.

Sec. 95.57 Funding; grant administration.

(a) Funding. Special grants will be funded in the same way as basic grants under this Part 95.

(b) Grant administration. The requirements related to grant administration contained in Part 98 are applicable to special grants to Governors, except as provided in Subpart D of Part 95.

(1) The overall 20 percent limitation on funds used for administration as set out in Sec. 98.12(f)(6) shall not apply to the special grant.

(i) Funds provided for vocational education services through the special grant are subject to the provisions of the 20 percent limitation on use of funds Sec. 98.12(f)(6). At least fifty percent (50%) of the vocational education funds allocated to administration shall be made available to local prime sponsor areas unless adequate justification for not doing so is provided to the RA by the Governor.

(ii) There is no administrative cost limitation on funds for State Manpower Services Councils or State manpower services.

(2) When funds for vocational education services are used for the payment of allowances to participants, the method of payment utilized must be that of the prime sponsor whose participants are receiving such allowances.

(i) Where the prime sponsor has an established delivery system for the payment of allowances pursuant to Sec. 95.34, the State Vocational Education Board shall utilize the agency or agencies administering that system.

(ii) Where the prime sponsor has no allowance payment delivery system, the method of payment shall be developed between the prime sponsor and the State Vocational Education Board, subject to the requirements of Sec. 95.34.

(c) Reports for special grants. (1) The following reports are required:

(i) A Special Grant-Program Status Summary.

(ii) A Special Grant-Financial Status Report.

(iii) A Quarterly Summary of Participant Characteristics (QSPC). The QSPC shall be required for participants provided Vocational Education services and in instances where the State manpower services funds are utilized to fund training and employment opportunities. The prime sponsor shall submit a QSPC on its Title I participants receiving Vocational Education services to the Governor so that a summary QSPC can be compiled. The Governor shall make arrangements to insure that local agencies responsible for intake of any participants receiving employment and training opportunities funded under Sec. 95.2(c)(2) supply the data required by the QSPC to the Governor so that a summary QSPC can be completed.

(2) The Governor shall supply to each prime sponsor to which vocational education services are provided a Special Grant Program Status Summary and a Special Grant Financial Status Report for funds expended in the sponsor's area, and shall submit a summary Special Grant-Program Status Summary and a Special Grant-Financial Status Report with copies of the individual prime sponsor reports attached, to the RA.

(3) Each of the three reports shall be submitted to the RA no later than 30 days after the end of the reporting period. If a Governor's period ends at a date other than the Federal fiscal year quarter, a fifth set of reports covering the entire grant period will be required. Instruction for completion of these reports are in the Forms Preparation Handbook.

Sec. 95.58 Nonfinancial agreement between prime sponsor and State Vocational Education Board.

(a)(1) Upon notification of the funds available for its area, the prime sponsor shall develop a financial, statistical, and narrative plan for the expenditure of such funds by the Vocational Education Board in the prime sponsor's area. This plan shall be developed in conjunction with the Vocational Education Board consistent with the prime sponsor's Comprehensive Manpower Plan. The plan will be signed by both the prime sponsor and the Board and when signed, will constitute a nonfinancial agreement.

(2)(i) If, within 90 days after notification of available funds for the area has been provided, the prime sponsor and the Board are unable to reach an agreement, the Governor shall mediate the dispute, with the intent of insuring that the local vocational education needs of the prime sponsor's area are met. The Governor retains the authority to determine, in consultation with the prime sponsor, the purposes for which the funds should be used. If mediation by the Governor does not result in a solution acceptable to both parties, it is incumbent upon the Governor to take action necessary to expeditiously and properly utilize those funds, including making other arrangements to insure that the prime sponsor's area is served or if such arrangements cannot be made, the Governor may then redistribute the funds to another prime sponsor area. The affected parties shall be informed prior to any action taken by the Governor.

(ii) If, within 120 days after notification of available funds for the area has been provided, the nonfinancial agreement still has not been finalized, the RA shall arbitrate the dispute.

(b) The Vocational Education Board shall provide services to the prime sponsor upon receipt of the necessary funds from the Governor. The nonfinancial agreement will consist of the following four sections:

(1) Prime sponsor vocational education nonfinancial agreement signature sheet;

CITATION	RULES AND REGULATIONS
	(2) Part I of the Special Grant-Program Planning Summary; (3) Appropriate columns of the Special Grant-Budget Information Summary; (4) Vocational education program narrative, which shall include the identification of the potential recipient(s) of the funds specified in Sec. 95.57(b)(1)(i) for program administration.
	(c) After the agreement is signed, a copy will be sent to the Governor for his review and approval.
	(d) The Governor shall develop procedures for the prime sponsors and the Vocational Education Board to follow when they desire to modify the nonfinancial agreement.
	(e) The Governor shall develop procedures to assure that the Vocational Education Board provides services consistent with the Governor's Special Grant plan for vocational education services and the nonfinancial agreements between the Board and the prime sponsors.
Sec. 95.59	Coordination with prime sponsor.
	(a) The financial and statistical information from the approved Nonfinancial Agreement Program Planning Summary and Budget Information Summary will be entered into the relevant columns of the prime sponsor's basic grant Program Planning Summary and Budget Information Summary as provided in the Forms Preparation Handbook. If the Comprehensive Manpower grant has been signed prior to final approval of the Vocational Education Agreement, a modified prime sponsor's grant Program Planning Summary and Budget Information Summary will be submitted when the vocational education information is available.
	(b) Information provided by the Vocational Education Program Status Report and Financial Status Report, supplied to the prime sponsor from the Governor, will be entered in the prime sponsor's basic grant Program Status Report and Financial Status Report.
	LEGISLATION
	EVALUATION: EXPERIMENTAL AND DEVELOPMENTAL PROJECTS
29 USC 823 Sec. 413	Sec. 413. (a) The Secretary shall provide for the careful and systematic evaluation of the Job Corps program, directly or by contracting for independent evaluations, with a view to measuring specific benefits, so far as practicable, and providing information needed to assess the effectiveness of program procedures, policies, and methods of operation. In particular, this evaluation shall seek to determine the costs and benefits resulting from the use of residential as opposed to nonresidential facilities, from the use of facilities combining residential and

CITATION	LEGISLATION
Annual report summary, publication.	nonresidential components, from the use of centers with large as opposed to small enrollments, and from the use of different types of program sponsors, including public agencies, institutions of higher education, boards of education, and private corporations. The evaluation shall also include comparisons with proper control groups composed of persons who have not participated in the program. In carrying out such evaluations, the Secretary shall arrange for obtaining the opinions of participants about the strengths and weaknesses of the program and shall consult with other agencies and officials in order to compare the relative effectiveness of Job Corps techniques with those used in other programs, and shall endeavor to secure, through employers, schools, or other Government and private agencies specific information concerning the residence of former enrollees, their employment status, compensation, and success in adjusting to community life. The Secretary shall also secure, to the extent feasible, similar information directly from enrollees at appropriate intervals following their completion of the Job Corps program. The results of such evaluation shall be published and shall be summarized in the annual report of the Secretary.
Grants or contracts. Pilot projects. Consultation with other Federal or State agencies. Waiver. Report to Secretary and Congress.	(b) The Secretary may undertake or make grants or contracts for experimental, research, or demonstration projects directed to developing or testing ways of securing the better use of facilities, of encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in the period of their enrollment, of reducing transportation and support costs, or of otherwise promoting greater efficiency and effectiveness in the program authorized under this part. These projects shall include one or more projects providing youths with education, training, and other supportive services on a combined residential and nonresidential basis. The Secretary may, if he deems it advisable, undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavioral aberrations. Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the prime sponsors, in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or Federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available to projects under this section to the extent they include the same or substantially similar activities. The Secretary may waive any provision of this title which he finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. He shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

CITATION	LEGISLATION
Model community vocational educational schools.	(c) In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum utilization of existing educational and training facilities, the Secretary in cooperation with the Commissioner of Education, shall enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model community vocational education schools and skill centers. Such facilities shall be centrally located in an urban area having a high dropout rate, a large number of unemployed youths, and a need in the area for a combination vocational school and skill center. No such agreement shall be entered into unless it contains provisions designed to assure that-- (1) a job survey be made of the area; (2) the training program of the school and skill center reflect the job market needs as projected by the survey; (3) an advisory committee composed of representatives of business, labor, education, and community leaders be formed to follow the center's activities and to make periodic recommendations regarding its operation; (4) arrangements have been worked out with schools in the area and the administrator of the skill center for maximum utilization of the center both during and after school hours; and (5) such accounting and evaluation procedures as the Secretary and the Commissioner of Education deem necessary to carry out the purpose of this project will be provided.

CITATION	LEGISLATION

CIVIL RIGHTS ACT OF 1964

(P.L. 88-352)

TITLE VI -- NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

42 USC 2000
d-2000d-4
Sec. 601

Sec. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financing assistance.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a findings has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to

CITATION — LEGISLATION

section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(42 U.S.C. 2000d-2000d-4) Enacted July 2, 1964, P.L. 88-352, Title VI, 78 Stat. 252.

RULES AND REGULATIONS

Sec. 80.1 — Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall; on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Health, Education, and Welfare.
(Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 43 U.S.C. 2000d) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17982, July 5, 1973]

Sec. 80.2 — Application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized to be extended to a recipient under a law administered by the Department, including the Federal assisted programs and activities listed in Appendix A of this regulation. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date if the regulation pursuant to an application is approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred or other assistance extended before the effective date of this regulation, (c) the use of any assistance by any individual who is the ultimate beneficiary under any such program, or

(d) any employment practice, under any such program, or any employer, employment agency, or labor organization, except to the extent described in Sec. 80.3. The fact that a type of Federal assistance is not listed in Appendix A shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.
(Sec. 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253; 42 U.S.C. 2000d-1, 2000d-3) [38 FR 17979, July 5, 1973]

Sec.80.3

Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) Specific descriminatory actions prohibited. (1) a recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular rece, color, or national origin.

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race,color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously descriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) Employment practices. (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the unemployment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide renumerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as primary objective:

(a) Projects under the Public Works Acceleration Act, Public Law 87-658, 42 U.S.C. 2641-2643.

(b) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(c) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(d) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32-34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal finacial assistance is not to provide employment, but discrimination on the ground of race, color, national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) Indian Health and Cuban Refugee Services. An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race,color, or national origin different from his.

(e) Medical emergencies. Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraphs (a) of this section.

(Sec. 601,602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253. 42 U.S.C. 2000d, 2000d-1, 2000d-3) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17979, 17982, July 5, 1973.]

Sec. 80.4 Assurances required.

(a) General. (1) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Where Federal financial assistnce is provided in the form of a transfer of real property or interest therein from the Federal Government the instrument effecting or recording the transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved but property is improved with Federal financial assistance, the recipient shall agree to include such a covenant to any subsequent transfer of the property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the statute under which the

real property is obtained and to the nature of the grant and the grantee. In the event a transferee of real property proposes to mortagage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(b) Continuing State programs. Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this regulation applies (including the Federal financial assistance listed in Part 2 of Appendix A) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this regulation, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

(c) Elementary and secondary schools. The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system, shall be deemed to be satisfied if such school or school system, (1) is subject to a final order of a court of the United States for the desegregation of such school or school system and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible Department official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides responsible assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible Department official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and the regulations in this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) Assurance from institutions. (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training projects, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunitity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the Institution's practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. (Sec. 601,602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1, Sec. 182; 80 Stat. 1209; 42 U.S.C. 2000d-5)[29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17980, 17982, July 5, 1973]

Sec. 80.5 Illustrative application.

The following examples will illustrate the programs aided by Federal financial assistance of the Department. (In all cases the discrimination prohibited is discrimination on the ground of race, color, or national origin prohibited by Title VI of the Act and this regulation, as a condition of the receipt of Federal financial assistance).

(a) In Federally assisted programs for the provision of health or welfare services, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the grantee under the program or, if the grantee is a State, by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of Sec. 80.3(e).

(b) In Federally-affected area assistance (P.L. 815 and P.L. 874) for construction aid and for general support of the operation of elementary or secondary schools, or in more limited support to such schools such as for the acquisition of equipment, the provision of vocational education, or the provision of guidance and counseling services, discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or in the treatment of its students in any aspect of the educational process, is prohibited. In this and the following illustrations the prohibition of discrimination in the treatment of students or other trainees includes the prohibition of discrimination among the students or trainees in the availability or use of any academic, dormitory, eating, recreational, or other facilities of the grantee or other recipient.

(c) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere directly or indirectly, with fulfillment of the assurance required with respect to the graduate school.

(d) In a training grant to a hospital or other nonacademic institution, discrimination is prohibited in the selection of individuals to be trained and in their treatment by the grantee during their training. In a research or demonstration grant to such an institution discrimination is prohibited with respect to any educational activity and any provision of medical or other services and any financial aid to individuals incident to the program.

(e) In grants to assist in the construction of facilities for the provision of health, educational or welfare services, assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of academic, research, or other facilities at institutions of higher education, assurances will be required that there will be no discrimination in the admission or treatment of students. In case of hospital construction grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the hospital, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith. In other construction grants the assurances required will similarly be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress.

(f) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(g) Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicant.

(h) A recipient may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly. Thus, a State, in selecting or approving projects or sites for the construction of public libraries which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.

(i) In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under Sec. 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of Sec. 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served.

(j) Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17980, 17982, July 5, 1973]

Sec. 80.6 Compliance information.

(a) Cooperation and assistance. The responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. For example, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in Federally-assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to sources of information. Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.
(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

Sec. 80.7 Conduct of investigations.

(a) Periodic compliance reviews. The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) Investigations. The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resoved by informal means, action will be taken as provided for in Sec. 80.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act of this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d,2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17981, 17982, July 5, 1973]

Sec. 80.8 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with Sec. 80.4. If an applicant fails or refuses to furnish an assurance required under Sec. 80.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefore approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000-1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d-5) 29 FR 16298, Dec. 4 1964, as amended at 32 FR 14556, Oct. 19, 1967; 38 FR 17982, July 5, 1973]

Sec. 80.9

Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by Sec. 80.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for theis action, and either (1) fix a date not less than 20 days after the date of which notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and Sec. 80.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administration Procedure Act).

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by this part, may be reimbursed for his travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or Joint Hearings. In cases in which the same or related facts are asserted to consitute noncompliance with this regulation with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the responsible Department official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with Sec. 80.10.
(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

Sec. 80.10 Decisions and notices.

(a) Decisions by hearing examiners. After a hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing examiner, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the responsible Department official, file with the reviewing authority exceptions to the initial decision, with his reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall consitutue the final decision, subject to the provisions of paragraph (e) of this section.

(b) Decisions on record or review by the reviewing authority. Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to Sec. 80.9(a) the reviewing authority shall made its final decision on the record or refer the matter to a hearing examiner for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Review in certain cases by the Secretary. If the Secretary has not personally made the final decision referred to in paragraphs (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the Reviewing Authority in accordance with rules of procedure issued by the responsible Department official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. He may also review such a decision upon his own motion in accordance with rules of procedure issued by the responsible Department official. In the absence of a review under this paragraph, a final decision referred to in paragraphs (a), (b), (c) of this seciton shall become the final decision of the Department when the Secretary transmits it as such to Congressional committees with the report required under section 602 of the Act. Failure of an applicant or recipient to file an exception with the Reviewing Authority or to request review under this paragraph shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this regulation.

(g) Post-termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part. An elementary or secondary school or school system which is unable to file an assurance of compliance with Sec. 80.3 shall be restored to full eligibility to receive Federal financial assistance, if it files a court order or a plan for desegregation which meets the requirements of Sec. 80.4(c), and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1) [29 FR 16298, Dec. 4, 1964, as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

CITATION	RULES AND REGULATIONS
Sec. 80.11	Judicial review. Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act. (Sec. 603, 78 Stat. 253; 42 U.S.C. 2000d-2) [29 FR 16298, Dec. 4, 1964, as amended at 32 F.R. 14555, Oct. 19, 1967]
Sec. 80.12	Effect on other regulations, forms and instructions. (a) Effect on other regulations. All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education and Welfare, and of Labor, 45 CFR Part 70; (2) Executive Order 11063 and regulations issued thereunder, or any other regulations or instructions, insofar as such Order, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground; or (3) requirements for Emergency School Assistance as published in 35 FR 13442 and codified as 45 CFR Part 81. (b) Forms and instructions. The responsible Department official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part. (c) Supervision and coordination. The responsible Department official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for review as provided in Sec. 80.10(e), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an

official of another Department or Agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the responsible official of this Department.
(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1) [29 FR 16298, Dec. 4, 1964 as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17981, 17982, July 5, 1973]

Sec. 80.13

Definitions.

As used in this part --

(a) The term "Department" means the Department of Health, Education, and Welfare, and includes each of its operating agencies and other organizational units.

(b) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation by the Secretary of authority to act in his stead under any one or more provisions of this part, any person or persons to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate such authority.

(d) The term "reviewing authority" means the Secretary, or any person or persons (including a board or other body specially created for that purpose and also including the responsible Department official) acting pursuant to authority delegated by the Secretary to carry out responsibilities under Sec. 80.10 (a)-(d)

(e) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(f) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(g) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(h) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therin, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(i) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(j) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(k) The term "applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(Sec. 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d-1) [29 FR 16298, Dec. 4, 1964; as amended at 32 FR 14555, Oct. 19, 1967; 38 FR 17982, July 5, 1973]

CITATION	LEGISLATION
	EDUCATION AMENDMENTS OF 1972 TITLE IX PROHIBITION OF SEX DISCRIMINATION SEX DISCRIMINATION PROHIBITED
20 USC 1681 Sec. 901	Sec. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:
	(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;
	(2) in regard to admissions to educational institutiosn, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is approved by the Commissioner of Education, whichever is the later;
	(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;
	(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine; and
	(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.
	(b) Nothing contained in subsection (a) of this section shall be intrepreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community. State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any

hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(20 U.S.C. 1681) Enacted June 23, 1972, P.L. 92-318, sec. 901, 86 Stat. 373, 374.

FEDERAL ADMINISTRATIVE ENFORCEMENT

20 USC 1682
Sec. 902

Sec. 902. Each Federal department and agency which is empowered to extend Federal financial assistance to any education program of activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(20 U.S.C. 1682) Enacted June 23, 1972, P.L. 92-318, sec. 902, 86 Stat. 374.

CITATION	LEGISLATION
	JUDICIAL REVIEW
20 USC 1683 Sec. 903	Sec. 903. Any department or agency action taken pursuant to section 902 shall be subject to such judicial review an may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title. (20 U.S.C. 1683) Enacted June 23, 1972, P.L. 92-318, sec. 903, 86 Stat. 374, 375.
	PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND
20 USC 1684 Sec. 904	Sec. 904. No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any educational program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment. (20 U.S.C. 1684) Enacted June 23, 1972, P.L. 92-318, sec. 904, 86 Stat. 375.
	EFFECT ON OTHER LAWS
20 USC 1685 Sec. 905	Sec. 905. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. (20 U.S.C. 1685) Enacted June 23, 1972, P.L. 92-318. sec 905, 86 Stat. 375.
	(Sec. 906 makes conforming amendments to other provisions of law.)
	INTERPRETATION WITH RESPECT TO LIVING FACILITIES
20 USC 1686 Sec. 907	Sec. 907. Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes. (20 U.S.C. 1686) Enacted June 23, 1972, P.L. 92-318, sec. 907, 86 Stat. 375.

CITATION | RULES AND REGULATIONS

Subpart A -- Introduction

Sec. 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

Sec. 86.2 Definitions

As used in this part, the term --

(a) "title IX" means title IS of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except Secs. 904 and 906 thereof; 20 USC Secs. 1681, 1682, 1683, 1685, 1686.

(b) "Department" means the Department of Health, Education, and Welfare.

(c) "Secretary" means the Secretary of Health, Education, and Welfare.

(d) "Director" means the Director of the Office for Civil Rights of the Department.

(e) "Reviewing Authority" means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(f) "Administrative law judge" menas a person appointed by the reviewing authority to preside over a hearing held under this Part.

(g) "Federal financial assistance" means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial Assistance, including funds made available for:

(i) The acquistion, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, encluding surplus property, and the proceeds

of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services fo Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) "Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) "Applicant" means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) "Educational institution" means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) "Institution of graduate higher education" means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose fo facilitating research by persons who have received the highest graduate degree in any field of study.

(l) "Institution of undergraduate higher education" means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study,

(m) "Institution of professional education" means an institution (except any institution of under graduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) "Institution of vocation education" means a school or institution (except an insitituion of porfessional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

(o) "Administratively separate unit" means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) "Admission" means selection for part-time,full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) "Student" means a person who has gained admission.

(r) "Transition plan" means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs 901, 902, Education Amendments of 1972, 86 Stat.373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.3 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part;

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to subparagraph (c)(iii).

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.4 Assurance required.

(a) General. Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with Sec. 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) Form. The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

CITATION	RULES AND REGULATIONS
	(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.5	Transfers of property. If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.6	Effect of other requirements. (a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, oblidations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h-9 and 298-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d); and any other Act of Congress or Federal regulation. (Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685) (b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession. (c) Effect of rules or regualtion of private organizaitons. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.7	Effect of employment opportunities. The obligation to comply with this Part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

CITATION	RULES AND REGULATIONS
Sec. 86.8	Designation of responsible employee and adoption of grievance procedures. (a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph. (b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.9	Dissemination of policy (a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to Sec. 86.8, or to the Director. (2) Each recipient shall make the initaal notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publicarion in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipeint or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient. (b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type

described in paragraph (a) of this section, or which is otherwise used in commection with the recruitment of students or employees.

(2) A recipient shall not use or disribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B -- Coverage

Sec. 86.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

Sec. 86.12 Educational institutions controlled by religious organizations.

(a) Application. This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) Exemption. An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.14 Membership practices of certain organizations.

(a) Social fraternities and soroities. This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher ducation.

(b) YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls. This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and the Camp Fire Girls

(c) Voluntary youth service organizations. This part does not apply to the membership proctices of voluntary youth services which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862, amending Sec. 901)

Sec. 86.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) Administratively separate units. For the purposes only of this section, Secs. 86.16, 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) Application of Subpart C. Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) Public institutions of undergraduate higher education. Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.16 Educational institutions eligible to submit transitions plans.

(a) Application. This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation

of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in Sec. 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.17 Transition plans.

(a) Submission of plans. An institution to which Sec. 86.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) Content of plans. In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) Nondiscrimination. No policy or practice of a recipient to which Sec. 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which Sec. 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded

sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sections 86.18-86.20 (Reserved)

Subpart C -- Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

Sec. 86.21 Admission.

(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in Sections 86.16 and 86.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

CITATION	RULES AND REGULATIONS
	(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.22	Preference in admission. A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.23	Recruitment. (a) Nondiscriminatory recruitment. A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to Sec. 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to Sec. 86.3(b). (b) Recruitment at certain institutions. A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sections 86.24-86.30	[Reserved]
	Subpart D -- Discrimination on the Basis of Sex in Education Programs and Activities Prohibited
Sec. 86.31	Education programs and activities. (a) General. Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students

to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships; or other awards established by foreign or demestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Programs not operated by recipient. (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity, takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.32 Housing.

(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) Other housing. (1) A recipient shall not, on the basis of sex administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

Sec. 86.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such

facilities provided for students of the other sex.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

Sec. 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable

to each course, service, and facility offered in or through such schools.
(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.36 Counseling and use of appraisal and counseling materials.

(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

Sec. 86.37 Financial assistance.

(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments. (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this paragraph, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b)(2)(i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and Sec. 86.41 of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

Sec. 86.38 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

CITATION	RULES AND REGULATIONS
Sec. 86.39	Health and insurance benefits and services. In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care. (Sec. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.40	Marital or parental status. (a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex. (b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient. (2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician. (3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students. (4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity. (5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy,

a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.41

Athletics.

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such teams for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) Adjustment period. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

Sec. 86.42

Textbooks and curricular material.
Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sections 86.43-86.50

[Reserved]

Subpart E -- Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

Sec. 86.51

Employment

(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) Application. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;
(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
(3) Rates of pay or any other form of compensation, and changes in compensation;
(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;
(5) The terms of any collective bargaining agreement;
(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
(7) Fringe benefits available by virtue of employment, whether or not administered by recipient;
(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
(9) Employer-sponsored activities, including social or recreational programs; and
(10) Any other term, condition, or privilege of employment.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.
(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

CITATION	RULES AND REGULATIONS
Sec. 86.53	Recruitment. (a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination. (b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.54	Compensation A recipient shall not make or enforce any policy or practice which, on the basis of sex: (a) Makes distinctions in rates of pay or other compensation; (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.55	Job classification and structure. A recipient shall not: (a) Classify a job as being for males or for females; (b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or (c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in Sec. 86.61. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.56	Fringe benefits. (a) "Fringe benefits" defined. For purposes of this part, "fringe benefits" means: any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit

or service of employment not subject to the provision of Sec. 86.54.

(b) Prohibitions. A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 86.57 Marital or parental status.

(a) General. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) Pregnancy as a temporary disability. A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accural of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of

CITATION	RULES AND REGULATIONS
	promotional opportunities, or any other right or privilege of employment. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.58	Effect of State or local law or other requirements. (a) *Prohibitory requirements*. The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex. (b) *Benefits*. A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.59	Advertising. A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.60	Pre-employment inquiries. (a) *Marital status*. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs." (b) *Sex*. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sec. 86.61	Sex as a bona-fide occupational qualification. A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment

CITATION	RULES AND REGULATIONS
	in a locker room or toilet facility used only by members of one sex. (Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
Sections 86.62-86.70	[Reserved]
Sec. 86.71	Interim Procedures. For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR Sections 80-6 -- 80-11 and 45 CFR Part 81.

CITATION | RULES AND REGULATIONS

REHABILITATION ACT OF 1973 TITLE V

NONDISCRIMINATION UNDER FEDERAL GRANTS

29 USC 794
Sec. 504

Sec. 504 No otherwise handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

RULES AND REGULATIONS

Subpart A -- General Provisions

Sec. 84.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 84.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Health, Education, and Welfare and to each program or activity that receives or benefits from such assistance.

Sec. 84.3 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93-516, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(d) "Department" means the Department of Health, Education, and Welfare.

(e) "Director" means the Director of the Office for Civil Rights of the Department.

(f) "Recipient" means any state of its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient.

(h) "Federal financial assistance" means any grant, loan contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person."

(1) "Handicapped persons" means any person who;

(i) has a physical or mental impairment which substantially limits one or more major life activities,

(ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means

(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accomodation, can perform the essential functions of the job in question:

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person

(i) of an age during which nonhandicapped persons are provided such services,

(ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or

(iii) to whom a state is required to provide a free appropriate public education under Sec. 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recept of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Sec. 84.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit. or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not as effective as that provided to others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are effective as those provided to others;

CITATION	RULES AND REGULATIONS

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, priviledge, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not spearate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

(i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) that perpetuate the discrimination of another recipient of both recipients are subject to common administrative control or are agencies of the state.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections

(i) that have the effect of excluding handicapped persons from, denying them the benefits of, otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of the specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Sec. 84.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation.

(1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants.

(1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant.

If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Director may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortagage or other encumbrance remains effective.

Sec. 84.6

Remedial action, voluntary action, and self-evaluation.

(a) Remedial action.

(1) If the Director finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the director deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both recipients to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action

(i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or

(ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation.

(1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request:

(i) a list of the interest persons consulted,

(ii) a description of areas examined and any problems identified, and

(iii) a description of any modifications made and of any remedial steps taken.

Sec. 84.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applications for admisstion to postsecondary educational institutions.

Sec. 84.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impared vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 84.7(a). A recipient shall make the initial notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Sec. 84.9 Administrative requirements for small recipients.

The Director may require any recipient with fewer than fifteen employees or any class of such recipients, to comply with Sections 84.7 and 84.8 in whole or in part, when the Director finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or calss of recipients to provide benefits or services.

Sec. 84.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B -- Employment Practices

Sec. 84.11 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractural or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment.

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs,

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

Sec. 84.12 Reasonable Accomodation.

(a) A recipient shall make reasonable accomodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) making facilities used by employees readily accesible to and usable by handicapped persons, and

(2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accomodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accomodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Sec. 84.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped person unless

(1) the test score or other selection criterion as used by the recipient, is shown to be job-related for the position in question, and

(2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the facts that the test purports to measure).

Sec. 84.14 Preemployment inquiries.

(a) Except as provided in paragraphs(b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 84.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 84.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary of affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Sections 84.15-84.20 [Reserved]

Subpart C -- Program Accessibility

Sec. 84.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Sec. 84.22 Existing facilities.

(a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 84.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

Sec. 84.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that effects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) American National Standards Institute accessibility standards. Design, construction, or alteration of facilities in conformance with the "American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961 (R1971)),[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Sections 84.24-84.30 [Reserved]

Subpart D -- Preschool, Elementary, and Secondary Education

Sec. 84.31 Application of this subpart.

Subpart D applies to preschool, elementary, sceondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 84.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Sec. 84.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severtiy of the person's handicap.

---

[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018.

(b) Appropriate education.

(1) For the purpose of this subpart, the provision of appropriate education is the provision of regular or special education and related aids and services that

(i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and

(ii) are based upon adherence to procedures that satisfy the requirements of Sections 84.34, 84.35, and 84.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for insuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free Education --

(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential placement. If placement is a public or private residential program is necessary to provide a free private residential program is necessary to provide a because of his or her handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Sec. 84.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreeements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec.84.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Sec. 84.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 84.37 (a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped persons in question.

(c) Comparable Facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 84.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except when those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions a recipient shall

(1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior,

(2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered,

(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and

(4) ensure that the placement decision is made in conformity with Sec. 84.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

CITATION	RULES AND REGULATIONS
Sec. 84.36	Procedural safeguards. A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.
Sec. 84.37	Nonacademic services. (a) General. (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities. (2) Nonacademic and extracurricular services and activities may include counseling services, recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. (b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. (c) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities. (2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 84.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Sec. 84.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Sec. 84.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec. 84.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Sections 84.35 and 84.36. Each recipient to which this section applies is subject to the provisions of Sections 84.34, 84.37, and 84.38.

Sec. 84.40 [Reserved]

Subpart E -- Postsecondary Education

Sec. 84.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 84.42 Admissions and recruitment.

(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions. In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available;

(3) Shall assure itself that

(i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 84.6(a) or when a recepient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 84.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if not written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Sec. 84.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, atheletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Sec. 84.44 Academic adjustments.

(a) Academic requirements. A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules. A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the students' achievement in the course, rather than reflecting the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids.

(1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for sutdents with impaired sensory, manual, or speaking skills,

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraties for students with hearing impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipient need not provide attendents, individually prescribed devices, readers for personal use or study, or other devices or services of a personal study.

Sec. 84.45 Housing.

(a) Housing provided by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comaprable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C, such housing shall be available in sufficient quantity and variety so that the cope of handicapped sutdents' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Sec. 84.46 Financial and employment assistance to students.

(a) Provision of financial assistance.

(1) in providing financial assistance to qualified handicapped persons, a recipient to which this sugpart applies may not

(i) on the basis handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment. A recipient that assists any agency, organization or person in providing employment opportunities to any of its students shall assure itself that such employment opprotunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates Subpart B.

Sec. 84.47 Nonacademic services.

(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of Sec. 84.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or participate in courses that are not separate or different.

(b) Counseling and placement services. A recipient to which this subpart applies that provides personal, academic or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing facutal information about licensing and certification requiremnts that may present obstacles to handicapped persons in their prusuit of particular careers.

(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Sec. 84.48 to 84.50 [Reserved]

Subpart F -- Health, Welfare, and Social Services

Sec. 84.51 Application of this subpart.

Subpart F applies to health, welfare, and other social serviceprograms and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or venefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 84.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis fo handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in Sec. 84.4 (b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) Auxiliary aids. (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory,

CITATION	RULES AND REGULATIONS
	manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question. (2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits of services. (3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.
Sec. 84.53	Drug and alcohol addicts. A recipeint to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcohol abuse or alcoholism.
Sec. 84.54	Education of institutionalized persons. A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensured that each qualified handicapped person, as defined in Sec. 84.3 (k)(2), in its program or activity is provided an appropriate education, as defined Sec. 84.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D.
Secs. 84.55 to 84.60	[Reserved]
	Subpart G -- Procedures
Sec. 84.61	Procedures. The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in Secs. 80.6 - 80.10 and Part 81 of this Title.
Secs. 84.62 to 84.99	[Reserved] Note: Incorporation by reference provisions approved by the Director of the Federal Register, May 27, 1975. Incorporated docuemnts are on file at the Office of the Federal Register.

PREAMBLE TO FINAL VOCATIONAL EDUCATION REGULATIONS

Title 45 -- Public Welfare

CHAPTER I -- OFFICE OF EDUCATION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PARTS 100a, 100b, 100c -- GENERAL
PROVISIONS FOR OFFICE OF EDUCATION PROGRAMS

PARTS 104 and 105 -- VOCATIONAL EDUCATION, STATE
PROGRAMS AND COMMISSIONER'S DISCRETIONARY PROGRAMS

AGENCY: Office of Education, HEW

ACTION: Final Regulations

SUMMARY: These regulations implement the Vocational Education Act of 1963 as completely revised by the Education Amendments of 1976. The regulations cover both the State administered programs and the Commissioner's discretionary programs. Generally, the regulations are designed to assist States to improve planning in the use of all resources for vocational education and to overcome sex discrimination in vocational education. Also, the regulations permit consolidation of programs to provide greater flexibility to the States in conducting vocational education programs.

EFFECTIVE DATE: Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232(d)), these regulations have been transmitted to the Congress concurrently with their publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

FOR FURTHER INFORMATION CONTACT: Ms. Juliette Lester, Chair of the Regulations Task Force, Bureau of Occupational and Adult Education, Room 5002, Regional Office Building No. 3, 7th & D Streets, S.W., Washington, D.C. 20202 (202-245-3465).

SUPPLEMENTARY INFORMATION:

RULEMAKING HISTORY

The Office of Education has been vitally concerned about the need for intensive public participation in the development of these regulations because of the substantial impact Pub. L. 94-482 will have on the administration and operation of vocational education programs throughout the nation. The major steps and activities involved in carrying out these public participation objectives are set forth below.

After the Act was passed the Commissioner published in the FEDERAL REGISTER (41 F.R. 49742) a Notice of Intent to Issue Regulations (NOI) on November 10, 1976. This NOI contained a comprehensive overview of the Act and set forth fifteen substantive issues needing clarification in the regulations. After publication of the NOI, a 65-day comment period followed, during which public comment was solicited. Between November 22, 1976 and January 15, 1977, public meetings were held in each State to discuss the issues raised in the NOI and any other relevant issues. Approximately 6,000 people attended these 66 meetings. Also, during this 65-day comment period, over 600 letters and telephone calls were received in response to the NOI from a wide variety of commenters. At the end of this initial comment period, all comments and suggestions received were analyzed and the proposed regulations were drafted to reflect this public participation.

The Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER at 42 F.R. 18542 on April 7, 1977. In addition to the proposed regulations, the NPRM also contained in the preamble an overview of the regulations. A 30-day comment period followed publication of the NPRM. A press release from the Office of Education was sent to approximately 450 local organizations and newspapers announcing the publication of the NPRM and the schedule for the public meetings. Public meetings were conducted in the ten HEW regional cities from April 20 through April 29. Letters of invitation were sent to approximately 10,000 individuals and organizations. Educators, administrators, consumers of the program, and members of the general public attended these meetings and presented formal statements. In addition, almost 700 letters were received containing comments, criticisms, recommendations, and questions on nearly every section of the proposed regulations. These comments came from diverse groups and individuals, including State and local educators and administrators, women's groups, and a large number of vocational students and teachers. This massive amount of public input was analyzed during the development of the final regulations. A summary of the comments received and the responses to these comments are set forth in this preamble.

Although the final regulations have been significantly affected by intense public involvement, the Office of Education sees the development of regulations implementing the Vocational Education Act as being an evolutionary process which will continue over a period of several years. The actual impact and consequences of the statutory provisions and problems which State and local educational agencies may have in implementing these provisions are not known at the present time. Therefore, the public is encouraged to continue to submit their views on these regulations, and the Office of Education will amend and revise the regulations in the future as need and experience dictate.

CRITICAL ISSUES

Many comments were submitted on many sections of the proposed regulations. These comments and the responses are set forth following the text of the regulations. Some of the comments raised critical policy issues with respect to the the interpretation and implementation of the Act. The critical issues are briefly summarized in the following paragraphs.

1. Funding formula for the limited English-speaking ability population.

Section 110(b)(2) of the Act requires each State to compute the amount of funds for persons with limited English-speaking ability from the "funds used by a State pursuant to section 110(b)(1)." Section 110(b)(1) directs the State to use at least 20 percent of the allotment under section 102(a) for the cost of vocational education for disadvantaged persons, for persons of limited English-speaking ability and for stipends.

The interpretation contained in the NPRM was for the State to apply the percentage of persons of limited English-speaking ability to the amount of the set-aside. For example, if the limited English-speaking population of the State is 10 percent, then 10 percent of the 20 percent set-aside (2 percent of the section 102(a) allotment) would be earmarked for persons of limited English-speaking ability.

Another legally supportable interpretation which would result in a significant change in the method by which Federal funds are distributed by the States to disadvantaged persons was given serious consideration by the Commissioner during the comment period. Under this interpretation, the State would apply the percentage of persons of limited English-speaking ability to the entire allotment under section 102(a), but such amount could not exceed the total amount reserved for the section 110(b)(1) set-aside. In accordance with this interpretation, if the limited English-speaking population of the State is 10 percent, then 10 percent of the entire allotment (rather than 10 percent of the set-aside) would be earmarked for the limited English-speaking population.

Since the Act is susceptible of two interpretations, the Commissioner has decided to retain the interpretation contained in the NPRM, set forth in Sec. 104.313(c). The Commissioner believes that the adoption of the latter interpretation would place drastic limitations on funds available for other disadvantaged students' needs and would substantially undermine many on-going vocational education programs for disadvantaged persons.

2. Excess costs of vocational education programs for handicapped and disadvantaged persons.

Section 110(a) of the Act requires each State to expend at least 10 percent of its allotment under section 102(a) for the "cost of vocational education for handicapped persons." Section 110(b) requires at least 20 percent of the allotment under section 102(a) to be expended for the "cost of vocational education for disadvantaged persons . . . ."

The statutory language "cost of vocational education," in sections 110(a) and 110(b) was interpreted in the NPRM to mean "full cost." It was stated in the preamble at 42 FR 18549 that, as long as the State complies with the matching requirements in section 110 of the Act, the State could use the combined Federal, State, and local funds to pay the entire cost of the vocational education program for handicapped and disadvantaged persons. In other words, Federal funds for vocational education programs for handicapped and disadvantaged persons were not limited solely to the cost of special services needed by the handicapped and disadvantaged.

Many commenters believed that the interpretation contained in the NPRM was a serious misreading of Congressional intent. According to these commenters, unless the Federal and matching State and local funds were used to pay the excess costs of necessary program modifications, supplementary services or special programs for handicapped and disadvantaged persons, funds available to accommodate these special populations would be greatly reduced. These commenters suggested that the statutory language "cost of vocational education" must be read in the context of the definitions of "handicapped" and "disadvantaged" which emphasize the special services which are needed to enable handicapped and disadvantaged persons to take full advantage of the vocational education program.

The Commissioner agrees that paragraphs (a) and (b) of section 110 are susceptible of the interpretation proffered by these commenters. Since a reduction in services for handicapped and disadvantaged persons might result by charging the full cost of the vocational education program against the required minimum, the comments in support of charging the excess costs are accepted. Accordingly, Sec. 104.303 of the regulations is amended to require the Federal and matching State and local funds to be used to pay only the "excess costs" (that is, the costs of special education and related services above the costs of the regular students) of the programs for the handicapped and disadvantaged. For example, if the cost of providing vocational training to the non-handicapped student is $600, and the cost of providing vocational training to the handicapped student in the same class is $750, the State may use the combined Federal, State, and local funds to pay only the incremental cost of $150 for the vocational education program for the handicapped student.

Alternatively, if the handicapped or disadvantaged student is placed in a separate program, Federal, State and local funds may only be used to pay those costs which exceed the average per pupil cost for vocational education for non-handicapped or non-disadvantaged students.

3. Providing data by "programs" rather than "courses."

Section 104.184(a) of the NPRM contained a requirement that the five-year State plan describe the State's goals in terms of the "programs (courses) and other training opportunities to be offered to meet employment needs." "Program" is defined as "a planned sequence of courses, services, or activities designed to meet an occupational objective." Since the Act uses the term "courses," there has been considerable debate during the development of the regulations over which term, "program," or "course" carries the proper interpretation in line with Congressional intent.

The major difficulty in changing from "programs" to "courses" in the final regulations is that it would create an undue reporting burden on the States and would greatly increase paperwork. Another problem is that "course" has no standard definition throughout the States, while "program" is specifically defined by the Office of Education in Handbook VI, entitled Standard Terminology for Curriculum and Instruction in Local and State School Systems (1970), which currently provides for reporting on at least 160 designated programs. Educators are familiar with OE's list of "instructional programs." The definitions are used by all States. Data by "courses" would be very difficult to obtain since all reporting presently is in terms of "programs." Definitions of "courses vary from State to State and within a particular State. Since "course is not a standardized term, aggregation of data would be virtually impossible.

In view of these difficulties, reporting data by programs rather than by courses should provide sufficient detail in the five-year State plan to meet the intent of the law adequately. Accordingly, the text of the final regulation has not been changed.

4. Definitions of "adult program" and "postsecondary program."

A great many comments were received in relation to the defintions of "adult program" and "postsecondary program" as they appeared in the Appendix to Part 104 in the Notice of Proposed Rulemaking. These comments objected to the definitions on three grounds:

1) The definitions are not contained in the Act;
2) They would jeopardize the student's eligibility for a Basic Educational Opportunity Grant (BEOG) or a College Work Study (CWS) grant; and
3) They would "eliminate" post-high school programs in vocational and technical school.

While it is true that the definitions, lableed as such, are not in the new Act, the language of the two defintions as set forth in Appendix A is taken directly from section 110(c) of the Act, which requires the State to set aside 15 percent of its basic grant for persons in two categories of programs. While these two categories of persons are not labeled in section 110(c) as "adult" or "postsecondary," they are so labeled in the legislative history of the Act (H. Rept. No. 94.1085, pp. 48-49) which indicates strong Congressional intent that the definitions be used to avoid the "enormous confusion" which has existed in reporting adult and postsecondary programs and that "a majority of the States urged Congress to clarify these definitions."

Further study has indicated clearly that the definitions of "adult program" and "postsecondary program" will not affect a student's eligibility for a BOEG or CWS grant. Eleigbility for grants under those programs is dependent on the Act and regulations for the particular program; they are not affected by definitions in the new Vocational Education Act or the regulations under the Act.

The definitions are intended, as the legislative history makes clear, for reporting (in the annual program plan and accountability report) and not for allocation purposes. Section 110(c) of the new Act, which uses the definitions, requires a set-aside of 15 percent for both categories; it does not require any specific apportionment between the two categories. Since a State may apportion its 15 percent set-aside between adult and postsecondary programs according to its decision as set forth in its STate plan, the definitions as used in the Appendix to Part 104 will not "eliminate" any program at the post-high school level in a vocational and techncial school. Nor should the definition in any way encourage States to favor post-high school level programs in community or junior colleges (which lead to an associate or other degree) over those in vocational and technical shcools (which lead to a certificate). While some commenters suggested that post-high school programs leading to a certificate should be added to the definition of "postsecondary program," the legislative history is clear (H. Rept. No. 94-1085, bottom of page 48 and top of page 49), that such programs are to be considered for reporting purposes as adult programs.

5. Equal access for minorities and women.

With respect to the policies and procedures that assure equal access for minorities and women, the question was posed whether the Office of Education will require more than a simple "we will not discriminate" statement in the five-year State plan."

Section 107(b)(4)(A) of the Act and Sec. 104.187(a) of the regulations require the State to set forth a detailed description of the policies and procedures to assure equal access to programs by women and men. This description must include the specific actions taken to overcome sex discrimination and the incentives adopted to encourage enrollment of both women and men in nontraditional courses. A perfunctory statement in the five-year State plan taht "we will not discriminate" will not satisfy this requirement in the Act and regulations.

The issue of equal access for minorities is not specifically addressed in the Vocational Education Act. Federal financial assistance under the Act, however, is subject ot the regulations in 45 CFR Part 80 which effectuate the provisions of Title VI of the Civil Rights Act of 1964. These civil rights requirements are referenced in 45 CFR 100b.262 of the General Education Provisions Regulations and have a direct application to the vocational education regulations. In this connection, it is expected that the Office of Civil Rights will review the five-year plan and annual program plan for civil rights compliance, particularly in the program areas serving women, minorities, and the handicapped.

NOTICE OF INTENT TO ISSUE REGULATIONS

Vocational Education -- State Plan And Discretionary Programs

On October 12, 1976, the President signed the Education Amendments of 1976 as enacted by Congress. The Amendments include five titles, of which Title II is Vocational Education. The Education Amendments of 1976 are cited as Pub. L. 94-482.

The purpose of this Notice of Intent to Issue Regulations is twofold. First, it gives the public an opportunity to comment at an early stage on issues basic to the implementation of the Act and gives notice of public meetings before the Office of Education prepares the regulations. Secondly, the notice provides information to the public on the basic changes which have been made to the Vocational Education Act (VEA) of 1963.

The proposed regulations will be published in the FEDERAL REGISTER as a notice of proposed rulemaking with another opportunity for public comment before they are published as final regulations. We are not, of course, asking at this time for recommendations for amending the new Act, but are concerned solely with those points in the law which require clarification, interpretation, or the setting of special criteria.

This Notice is issued by the Commissioner of Education; it has not been reviewed by the Secretary of the Department of Health, Education, and Welfare (HEW).

Comments by: December 17, 1976.

Addressed to: Regulations Task Force, Bureau of Occupational and Adult Education, Room 5002, Regional Office Building, No. 3, Washington, D. C. 20202.

For further information call: Ms. Juliette Lester, Chair (202) 245-2305.

This Notice sets forth issues in relation to both the State Plan Programs and the Commissioner's Discretionary Programs (providing direct grants and contracts) of the amended Vocational Educator Act. The tentative plan is to issue two new parts of the regulations to replace the present two parts in Title 45 of the Code of Federal Regulations (CFR). The Code of Federal Regulations is the annual compilation of agency regulations which have appeared in the FEDERAL REGISTER. The Office of Education's regulations appear in Title 45, Code of Federal Regulations. The regulations for vocational education have been 45 CFR Part 102 (State Plan Programs) and 45 CFR Part 103 (National Programs). The present regulations will remain in effect as to matters arising under the VEA before its revision by Pub. L. 94-482. The new regulations under the amended Act will be designated Part 104 (State Plan Programs) and Part 105 (National Programs).

LEGISLATIVE HISTORY

Certain parts (D, E, F, G, H, I and J) of the VEA of 1963, as amended, were due to expire on June 30, 1975 and were extended to September 30, 1976. In anticipation of the expiration of these parts of the Act, Congress held hearings on revision of the Act. The hearings before the Committee on Education and Labor in the House of Representatives resulted in House Report No. 94-1085 (May 4, 1976) and a House Bill (H. R. 12835) on May 17, 1976. The hearings before the Education Subcommittee of the Senate Committee on Labor and Public Welfare resulted in Senate Report No. 94-882. Senate Bill S. 2657, as revised on the Senate floor ("Congressional Record," August 25 and 26), passed the Senate on August 26, 1976. The House Senate conferees issued a Conference Report (House Report No. 94-1701) on September 27, 1976. The Senate passed the Conference version of the bill on September 28 and the House on September 29, 1976. The President signed the bill into law on October 12, 1976.

While some parts of the new VEA are effective immediately, the major parts, requiring a new State Plan, are not effective until October 1, 1977, so that States may have time to study the new Act and prepare a new State Plan, which must be filed with the Office of Education by July 1, 1977. The present vocational education programs are extended through fiscal year (FY) 1977.

OVERVIEW OF NEW ACT

There follows a brief summary of the Act as passed by Congress; policy issues are discussed later under "Issues." Title II of the Education Amendments of 1976 amends the VEA of 1963, as amended. The new Act is divided into Part A -- State Vocational Education Programs, Part B -- National Programs (the Commissioner's Discretionary Programs), and Part C -- Definitions.

PART A -- STATE VOCATIONAL EDUCATION PROGRAMS

Subpart 1. General provisions

Statement of Purpose. The purpose of the Act is to assist States in improving planning in the use of all resources for vocational education and manpower training; to overcome sex discrimination and sex stereotyping in vocational education; to provide part-time employment as a means of enabling youths to continue full-time their vocational training; and to provide ready access to vocational training or retraining for persons of all ages who need it.

Sex Bias Personnel. Each State desiring to participate shall assign full-time personnel to assist in reducing sex bias and sex stereotyping in vocational education programs and activities throughout the State. Each State is to reserve $50,000 from the basic grant for these purposes.

Indians. The Commissioner is to reserve funds for contracts for vocational education with Indian tribes and organizations and for programs to be operated by the Bureau of Indian Affairs.

Allocation of Funds. The allotment formula for basic vocational programs is the same as the one contained in the current Act for basic grants. No State is to receive less under this procedure than it received under its VEA allotments for FY 1976. Eighty percent of such sums is available for Subpart 2, and 20 percent for Subpart 3.

Five-Year Plan. To be eligible for VEA funding, a State must submit to the Commissioner during FY 1977, and each fifth year thereafter, a five-year State plan. In formulating the plan, the State board is to involve actively a representative of the State agency for secondary education, the State agency for postsecondary vocational education, the State agency for community and junior colleges and the State agency for institutions of higher education. The Board is also to involve a representative of a local school board, of vocational teachers, of local school administrators, of the State Manpower Services Council, of the State agency for comprehensive postsecondary education planning, and of the State advisory council.

The planning process requires at least four meetings during the planning year between the State board and these designated representatives at designated times. If the representatives are not able to agree on the contents of the State plan, the State board is responsible for reaching a final decision. In this event, the State board must include in the plan the recommendations it rejected and the reason for each rejection. Any dissatisfied agency may appeal the State board's decision to the Commissioner. The Commissioner decides whether the State plan in question is "supported by substantial evidence, as shown in the State plan, and will best carry out the purposes of the Act."

Annual Plan. To be eligible for funding, the State must also submit an annual program plan and accountability report. The procedural requirements for developing the five-year plan are also applicable to the one-year plan (although the number of required planning meetings is reduced to three).

Planning Funds and State Administration. In order to develop the five-year and annual plans, there is authorized $25 million annually beginning in FY 1978 to be distributed among the States by the basic grant formula. These funds are also to be used by the State to evaluate the effectiveness of each assisted program and for State administration of VEA-supported programs. "Administration" is defined as those activities necessary for the State for the proper and efficient performance of its duties under the Act, including supervision, but not including ancillary services. The Federal share for State administration is up to 50 percent, except for FY 1978 it is up to 80 percent, and for FY 1979 it is up to 60 percent.

General Application. To be eligible to receive funds, a State must also maintain on file with the Commissioner a general application. This general application includes the assurance that the State will give priority in distributing funds to (1) economically depressed areas which are unable to meet their vocational needs without Federal assistance because of high unemployment rates, and (2) programs which are new to the areas to be served and which meet new and emerging manpower needs. The two most important factors to be used by the State in distributing funds to a local educational agency (LEA) are (1) the relative financial ability of the LEA to provide needed services and (2) the relative concentration of low-income populations within the LEA. In the case of other eligible recipients, the two most important factors to be used by the State in distributing funds are (1) the recipient's relative financial ability to provide needed services and (2) the relative concentration of students it serves whose education imposes higher than average costs (e.g., handicapped, disadvantaged, bilingual).

State and Local Advisory Councils. Participating States must establish State advisory councils representing at least 20 designated interests. There must also be appropriate representation by sex, race, ethnicity, and geography on the councils. Members serve for three-year staggered terms and a majority of the members must be non-educators. There is authorized for the operation of State advisory councils $8 million in FY 1978, increasing to $10 million in FY 1981. The Commissioner is to pay to each State for the council "an amount equal to reasonable amounts expended" but not less than $75,000 nor more than $200,000. The duties of the State advisory councils are expanded to include identifying manpower as well as vocational needs, commenting on the reports of the State Manpower Services Council, and providing assistance to local advisory councils. (The State Manpower Services Council is given reciprocal responsibility to comment on vocational education needs.)

Each LEA and postsecondary institution receiving VEA funds must establish a local advisory council composed of members of the general public to provide advice on job needs and relevancy of courses to those needs.

National Priority Programs. From the amount allotted to each State for the formula grant programs, at least 10 percent of the allotment is to be used to pay 50 percent of the cost of vocational programs for the handicapped; at least 20 percent to pay 50 percent of the cost of the programs for the disadvantaged ("disadvantaged" is defined as persons who have academic or economic handicaps and who require special services in order to succeed in vocational programs under criteria developed by the Commissioner based on objective standards), for persons with limited English-speaking ability, and for stipends for students with acute economic needs which cannot be met under other programs; and at least 15 percent to pay 50 percent of the cost of postsecondary vocational programs. The percentage of the 20 percent set-aside for programs for the disadvantaged which goes to persons with limited English-speaking ability is equivalent to the same percentage which persons in the State aged fifteen to twenty-four who have limited English-speaking ability represent to the total population of the State in the same age group.

Maintenance of Effort. The combined fiscal effort of both the State educational agency (SEA) and the local educational agency (LEA), on a per pupil or on an aggregate expenditure basis, may not decrease from one fiscal year to the next. No payment is to be made to postsecondary education institutions until the analogous requirements are met.

Federal and State Evaluations. The Commissioner is to transmit to each State board annually an analysis of the State's annual plan. The Office of Education's Bureau of Occupational and Adult Education is to analyze the strengths and weaknesses of programs in at least ten States per fiscal year. These analyses are to be complemented by fiscal audits done in the same States during the same time period. Each State is to evaluate the effectiveness of each funded program within a five-year period. Programs which purport to impart entry level job skills are to be evaluated according to the extent to which program completers and leavers find employment in related occupations and are considered well-trained by their employers.

Subpart 2 -- Basic grant

From funds earmarked for this Subpart (80 percent of each State's allotment), the Commissioner is authorized to make grants to States for vocational education programs, workstudy programs, cooperative vocational programs, energy education programs, construction of area vocational education facilities, support of full-time personnel to eliminate sex bias, stipends for students who have acute economic needs which cannot be met by other programs, placement services for students whose needs cannot be met by other programs, industrial arts programs, support services for women who enter programs designed to prepare individuals for jobs traditionally limited to men, day-care services for children of persons enrolled in vocational programs, and construction and operation of residential vocational schools.

Subpart 3 -- Program improvement and supportive services

From funds earmarked for this Subpart (20 percent of each State's allotment), the Commissioner makes grants to States for program improvement and supportive services which States may use for any of the following vocational education programs:

(a) Research programs; (b) exemplary and innovative programs; (c) curriculum development programs; (d) vocational guidance and counseling programs; (e) vocational education personnel training programs; and (f) grants to assist in overcoming sex bias.

Research programs (section 131(a)) are to be operated by State research coordination units or are to be conducted by contracts awarded by those units. No research contract can be made "unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such contract." The contractors' efforts must be focused on comprehensive program improvement through applied vocational research, experimental programs to test effectiveness of research findings, improved curriculum materials, projects in the development of new careers, and dissemination of the results of these activities.

The exemplary and innovative programs (section 132(a)) supported must be part of these comprehensive plans. Each of these programs is to give priority to reducing sex stereotyping in vocational education.

The annual plan covering the final year of support by a State for any exemplary program must indicate the proposed disposition of the project following the cessation of Federal support and the means for continued support of successful projects.

A State may not contract with an applicant for a curriculum development project (section 133(a)) "unless the applicant can demonstrate a reasonable probability that the contract will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination of such contract." The Federal share for curriculum projects is 100 percent.

Not less than 20 percent of Subpart 3 funds is to be used for guidance and counseling services, which must include initiation and improvement of counseling services, counseling leading to greater understanding of educational and vocational options for both sexes, provision of placement and follow-up services for vocational and non-vocational program students, training to help overcome sex-biased counseling, counseling in correctional institutions, counseling for persons of limited English-speaking ability, resource centers for out-of-school individuals, and leadership for guidance and counseling.

Subpart 4 -- Special programs for the disadvantaged

There is authorized $35 million in FY 1978, increasing to $50 million in FY 1982, for grants to States for special programs for the disadvantaged in areas of high youth unemployment and school dropouts. The funds are distributed by the basic State grant formula. Projects are to receive 100 percent Federal support.

Subpart 5 -- Consumer and homemaking education

There is authorized $55 million for FY 1978, increasing to $80 million in FY 1982, for consumer and homemaking programs. The Federal share is 50 percent, except in economically depressed areas where the Federal share is 90 percent. One-third of the separate authorization is for these economically depressed areas. Grants may be used for (a) educational programs that encourage males and females to prepare for combining homemaking and wage earning roles, develop curriculum materials which encourage elimination of sex stereotyping, give greater consideration to needs in economically depressed areas, encourage outreach programs, prepare persons for the homemaker role, and emphasize consumer, nutrition, and parenthood education, and (b) for ancillary services.

PART B -- NATIONAL PROGRAMS

Subpart 2 -- Programs of national significance

Program Improvement. From the 5 percent of the basic grant reserved for the Commissioner for this Subpart, the Commissioner may fund up to 100 percent of the cost of the following types of activities if they are found to be of national significance:

(a) Research projects; (b) exemplary and innovative projects; (c) vocational curriculum development projects; (d) vocational guidance and counseling programs; (e) vocational education personnel training programs; and (f) grants to assist in overcoming sex bias.

A grant applicant must be able to demonstrate a reasonable probability that the "grant will result in improved teaching techniques or curriculum materials that will be used in a substantial number of classrooms or other learning situations within five years after the termination date of such grant." Contractors for exemplary and innovative projects must provide for appropriate participation by nonprofit private school children. Activities funded shall include contracts to convert job preparation curriculums prepared for use by the armed services to curriculums usable by the schools.

Training and Development Programs for Vocational Education Personnel. From the 5 percent reserved for Subpart 2, the Commissioner is to provide opportunities for full-time advanced study of vocational education, opportunities for certified teachers in other fields to become vocational educators, and opportunities for persons in industry with skills in fields for which there is a need for vocational educators to be so trained. Persons having two years of experience in vocational education or in comparable types of situations and who have a baccalaureate degree may receive awards for use at the graduate level, in approved institutions of higher education. Persons certified to teach in any field who have applicable vocational skills or persons employed in industry with similar skills can receive awards for use in approved teacher-training institutions. Award recipients in the first category can receive stipends for three years, award recipients in the second category for two years. The training institution receives up to $4,500 an academic year and up to $1,000 a summer term per award recipient.

Subpart 3 -- Bilingual vocational training

There is authorized $60 million for FY 1978, increasing to $80 million for FY 1982, for bilingual vocational training programs. Sixty-five percent of this amount is earmarked to conduct bilingual vocational training programs; 25 percent is earmarked for pre-service and in-service programs to train instructors for bilingual vocational training programs; and 10 percent is earmarked for grants for the development of instructional materials, research, demonstration activities, and related teacher-training activities in the area of bilingual vocational training.

Subpart 4 -- Emergency assistance for remodeling and renovation of vocational education facilities

There is authorized $25 million for FY 1978, increasing to $100 million in FY 1981, for grants by the Commissioner to rural and urban local educational agencies which are unable to provide vocational programs to meet existing manpower needs because of the obsolescence of their facilities or equipment. Grants can be used to support 75 percent of the cost of modernizing such facilities (100 percent in cases of extreme need) and the cost of changes necessary to comply with the Architectural Barrier Act.

INVITATION TO COMMENT

Persons or organizations wishing to submit comments or suggestions on the issues raised in this Notice of Intent should write to:

Regulations Task Force
Bureau of Occupational and Adult Education
Room 5002, Regional Office Building, No. 3
Washington, D.C. 20202.

Written comments and information may be submitted in any form, such as by means of letters, position papers, or memoranda. There are no special rules concerning format. In order to assure full consideration, commenters are encouraged to submit their comments, suggestions, and questions on or before December 17, 1976. Following this date, comments received in response to this Notice of Intent or in response to public hearings will be considered, to the extent time allows, during the drafting of the notice of proposed rulemaking.

To enable the Commissioner to benefit fully from the public's views on the various questions raised in this Notice, public meetings with interested persons and organizations will be conducted. (See the last section of this Notice entitled "Public Meetings.") These meetings will focus on a broad discussion of the ideas, comments, and recommendations presented to HEW for consideration.

ISSUES

Comments, advice, and guidance from the public are requested on the issues set forth below. When suggested alternatives are given, members of the public should feel free to suggest additional alternatives. Other issues which members of the public believes to be important in the new Act may also, of course, be identified and made the subject of comment. Issues are grouped by subject matter, not necessarily in the order in which they appear in the new Act.

ISSUE 1. GUIDELINES FOR STATE PLANS

One of the primary objectives of the Office of Education and HEW is to promulgate simplified and clear regulations. In order to achieve this objective, no consideration is presently being given to the separate publication of guidelines for the development of the State plan. Instead, the new Act itself and its regulations will provide the necessary guidance for the development of State plans. By providing minimum instructions, the States will have considerable latitude in determining the format of their State Plans. The emphasis for the development of the plan, therefore, will be on substantive content, not uniformity in the format, of the State plans.

The Office of Education realizes that the States have in the past relied heavily on the State Plan Guide, which has been distributed to the States. In view of the past history of reliance on the State Plan Guide, it seems appropriate, before issuing a Notice of Proposed Rulemaking, to solicit public comment on the question of need for guidelines.

ISSUE 2. SEX STEREOTYPING IN VOCATIONAL EDUCATION

Congress has expressed concern over the existence of sex bias and sex stereotyping in vocational education. A major problem is the sharp differences in male and female enrollments in vocational education programs. Although women make up approximately half of vocational enrollments, 42.1 percent of the women are enrolled in consumer and homemaking classes not designed to prepare them for employment. Most of the remaining 57.9 percent are enrolled in classes preparing them for work in traditional "female" job categories.

A second problem is that society has tended to take the view that most jobs are designed for males, and, therefore, women should be trained for "women's jobs" and not compete with men. Accordingly, students have been counseled into jobs or training for jobs that are traditionally male or female, and frequently girls and women have been guided into employment at lower income levels. Thus, women seeking higher wages have realized that they must seek employment in traditionally male fields.

The problems women face in vocational education were discussed at length in the House and Senate committee hearings. Congress recognized that positive action is strongly needed to eliminate sex bias and sex stereotyping from all vocational education programs and that the initiative for overcoming all forms of sex bias and sex stereotyping must come from the new Act. Congress gave special attention to women's problems and included provisions for women's programs after hearing testimony from witnesses indicating that little was being done to encourage vocational programs to reflect the changing status of women in society.

The new Act contains a statement of purpose that requires State boards of vocational education to take positive action to eliminate sex bias and sex stereotyping from all vocational programs. Several sections of the new Act relate to the role of women and are addressed to students, teachers, administrators, counselors, and advisory councils, as well as State boards. These sections raise issues as to how to implement the new provisions. In summary, these issues are as follows:

(a) State plan requirements

Section 107(b)(4) of the new Act requires each State to set forth policies and procedures to assure equal access to vocational education programs for both men and women. Each State must include in its State plan a detailed description of these policies and procedures, specific actions that will be taken to overcome sex bias and sex stereotyping, incentives for local education agencies to encourage the enrollment of men and women in non-traditional courses, and a program to meet the needs of persons identified in item 5 below.

Section 108(b)(1)(c) requires the annual program plan to "show the results of the * * * compliance of the State plan with the provision contained in section 107(b)(4)(A) concerning providing equal access to programs by both men and women."

(1) Public comments and suggestions are invited with respect to the kinds of policies and procedures that should be included in the State Plan on each of the following points.

(i) Access to institutions and programs.
(ii) Enrollment patterns within programs and courses.
(iii) Employment within the field.
(iv) Recruiting practices for students and educational personnel.
(v) Course requirements in terms of prerequisites and test scores.
(vi) Guidance and counseling.
(vii) Pre- and in-service training for instructional personnel.
(viii) Work experience opportunities.
(ix) Day care.
(x) Job placement and counseling.

(2) What criteria should be set out to assure that there will be a timely and fair opportunity for review of and comment on equal access to vocational education programs?

(3) What kinds of incentives could the States supply to LEAs to assure positive steps in this area? What criteria should be used to measure the success of incentive systems in meeting the objectives of the Act? Should different incentives be required if a basic level of effectiveness is not achieved?

(4) In its annual program plan how should a State assess the results of its compliance with the equal access requirement and in what form should these results be reported?

(5) What kind of special courses in employment skills and placement services would best meet the needs of displaced homemakers, unskilled single heads of households, homemakers seeking full-time employment, and persons seeking non-traditional jobs (section 107(b)(4)(B))?

(b) State administration

Section 104(b) provides funding for nine functions of "full-time personnel" to assist the State board in fulfilling the purpose of the Act. These functions include creation of awareness of women's programs, collecting and analyzing data on the status of men and women in vocational education and making it available, reviewing programs, grant distribution, and annual program plans, and recommending steps to overcome sex bias and sex stereotyping in vocational education programs. States are given leeway in placing these functions within the State structure, and each "State shall reserve $50,000" to carry out the nine functions listed in section 104(b) of the Act. Comment is invited with respect to the development of criteria which would measure the extent to which these objectives of the new Act are being met through the activities of the full-time personnel.

(c) Advisory council

Section 105(a)(17) of the new Act requires that the State advisory councils on vocational education include specified categories of women in their membership to fulfill an advocacy role for women's issues. Problems arise from ambiguities in the language of this section. The phrase "including women who are members of minority groups" leaves several points unclear. This section of the Act also requires that there be "appropriate representation" of both sexes on the State advisory councils. This, too, is ambiguous. The following questions need to be answered:

(1) How should the term "appropriate" be defined?

(2) How should the Commissioner assess the "appropriateness" of the representation?

(3) How many minority groups represented by women must be included to satisfy section 105(a)(17) of the new Act? Can one minority represent "minority groups"?

(d) Vocational education programs

Several sections of the new Act dealing with vocational education programs contain provisions for eliminating sex bias and sex stereotyping from all these programs. These sections are summarized as follows:

(1) Research Programs. Section 131(a) provides funds which may be used for "experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings, including programs and projects to overcome problems of sex bias and sex stereotyping" and for improved curriculum materials which will help "to insure that such curricula do not reflect stereotypes based on sex, race, or national origin."

(2) Exemplary and Innovative Programs. By Section 132, funds are made available to States for support of exemplary and innovative programs, with the requirement that "Every contract...shall give priority to programs and projects designed to reduce sex stereotyping in vocational education."

(3) Curriculum Development. Section 133(a)(2) states that funds may be used for curriculum development projects including the development of curriculum, guidance, and testing materials designed to overcome sex bias in vocational education programs and support services designed to enable teachers to meet the needs of individuals enrolled in vocational education programs traditionally limited to members of the opposite sex.

(4) Vocational Guidance and Counseling. To create awareness of women's problems in vocational education and to help eliminate sex stereotyping and sex bias in vocational guidance and counseling, section 134 (a)(4) of the new Act includes "vocational guidance and counseling training designed to acquaint guidance counselors with (A) the changing work patterns of women, (B) ways of effectively overcoming occupational sex stereotyping, and (C) ways of assisting girls and women in selecting careers solely on their occupational needs and interests, and to develop improved career counseling materials which are free."

(5) Vocational Education Personnel Training. Section 135(a)(2) makes funds available for in-service training of teachers, administrators, supervisors, and counselors "to overcome sex bias in vocational education programs."

ISSUES

In order to assure that sex stereotyping is eliminated from vocational education programs, public comments and suggestions are invited with respect to:

(1) What criteria should be developed for the establishment of programs and projects to help overcome sex stereotyping in each of these areas?

(2) What specific assessment tools should be developed to measure the success of these programs and projects?

ISSUE 3. STATE ADMINISTRATION

Each State desiring to participate in programs authorized under the Act is required (section 104(a)) to designate or establish a single State board or agency of vocational education in accordance with State laws. This State board will serve as the sole State agency responsible for the administration, or for the supervision of the administration, of programs authorized under the Act. The responsibilities of the State board, as set forth in Section 104(a)(1) of the Act, are:

(a) Coordination of the development of policy with respect to programs;

(b) Coordination of the development, and the actual submission to the Commissioner, of the five-year State plan, of the annual program plan, and the accountability report; and

(c) Consultation with the State advisory council on vocational education and with other appropriate State agencies, councils, and individuals involved in the planning and reporting.

Except for these three responsibilities, the State board may delegate any of its "other responsibilities involving administration, operation, or supervision, in whole or in part, to one or more appropriate State agencies." However, should the State board elect to delegate any part of its responsibility to another State agency, it must certify in its annual program plan and annual accountability report to the Commissioner as to each responsibility delegated to another State agency.

As indicated above, the responsibilities of the State board are described as those of "consultation" and "coordination." Since the term "coordination" has many meanings, it may suggest different kinds of activities to different people. In order to avoid any question as to the exact role of the State board, it seems appropriate to explain in the regulations what is meant by the phrase "coordination of the development of policy" with respect to vocational education programs.

Regarding the role of the State board, the Act requires the active participation of the State board and representatives of the designated coordinating agencies both prior to and during the development of the five-year State plan, and the annual program plan and accountability report, and to obtain their concurrence on each of the final documents. Therefore, does the phrase "coordination of the development of policy" mean, in fact, that the State board is responsible for convening representatives of the designated agencies in order to consult with them as a group relative to the development and direction of vocational education programs?

5

ISSUE 4. STATE ADVISORY COUNCIL ROLE IN STATE BOARD EVALUATIONS

Section 112(b)(2) of the Act requires the active participation of the State advisory council in the State board's evaluation of programs. Specifically, the Act provides that the council "shall assist the State in developing these plans, monitor the evaluations conducted by the State, and use the results of these evaluations in compiling its annual report required by section 105." Section 105(d)(3) requires the council to submit an annual evaluation report which "evaluates the effectiveness of vocational education programs, services, and activities." Even though there appears to be duplication of effort by the State board and the council, it is evident that the Congress expects the evaluation of the two agencies to be coordinated. By the Act assigning to the council the functions of "assisting" and "monitoring," a question is raised as to the nature and degree of oversight and control the council may exert over the State board's activities.

The issue is whether the regulations should delineate specifically the council's role in the State board's evaluation and the degree of relationship between the separate evaluations. In particular, does the term "monitoring" need to be interpreted in such a manner as to retain autonomy of the agencies?

Alternatives

(a) Allow the State boards and councils to develop necessary working relationships within the broad scope of the regulations.

(b) Enumerate in the regulations specific activities to be carried out by the council in fulfilling its responsibilities related to State board evaluations.

(c) Require in the State plan a written cooperative agreement by the State board and the council setting forth the responsibilities of each agency in meeting the requirements for evaluations.

ISSUE 5. FISCAL INDEPENDENCE OF STATE ADVISORY COUNCILS

The new Act affirms the independence of the State advisory council on vocational education by amendments which require the council to have control over its programming, administration, and funds. The extent to which the council has control over the expenditure of funds, however, is an issue. Section 105(e) authorizes the council to employ personnel or to contract for services necessary to enable it to carry out its evaluation functions, "independent of programmatic and administrative control by other State boards or agencies." Section 105(f)(2) further provides that "the expenditure of these funds is to be determined solely by the State advisory council for carrying out its functions under this title, and may not be diverted or reprogrammed for any other purpose by any State board or agency." Although the determination is to be made "solely" support from Federal funds should be given to student organizations than has been provided over the past several years under the current Act. Accepting this as the level of support to be provided, the Office of Education may propose in the Notice of Proposed Rulemaking, unless public participation indicates otherwise, that the list of activities of student organizations set forth below be supported to the extent that the activities are an integral part of the instruction. Federal funds and State matching funds could then be used for:

(a) Vocational or technical training or retraining supervised by vocational education personnel; or

(b) Field or laboratory work related to the vocational training and supervised by vocational education personnel; or

(c) Vocational guidance and counseling in connection with vocational training for the purpose of facilitating occupational choices; or

(d) Acquisition of instructional supplies, teaching aids and equipment used by vocational education personnel in instructional activities.

Under the above, as long as the activities of the student organization fall within these four components, expenditures for the activity would be reimbursable.

Since the expenditure of funds for lodging, feeding, conveying, or furnishing transportation to conventions is not permissible unless specifically authorized by statute, it follows that social, athletic, or recreational events of student organizations would not be reimbursable from Federal funds. Travel of vocational students would be reimbursable, however, if the travel is related to their instruction.

ISSUE 8. GENERAL APPLICATION (ASSURANCES)

The new Act (section 106) requires each State to maintain on permanent file with the Commissioner a general application containing assurances that the State will abide by the Act in carrying out the program. In addition to the general assurances concerning the proper and efficient administration of the Act which have been previously submitted pursuant to section 434(b) of the General Education Provisions Act, the following assurances are also required:

(a) State board will cooperate with specified State agencies in the formulation of the State plan;

(b) Fiscal effort will be maintained at both the State and local level;

(c) Distribution of funds will be based on economic, social, and demographic factors relating to the need for vocational education in the State;

(d) Local applications will be developed in consultation with local advisory councils;

by the council, it is not entirely clear whether the council is bound by the fiscal policies and regulations of the State or other public agency serving as its fiscal agent. For example, would a council be at liberty to formulate its own policies on compensation, travel allowances, or contracting procedures without regard to the regulations of its fiscal agent. This issue is compounded by the fact that a significant number of councils are presently constituted as State agencies either by State legislation or Executive Order.

Alternatives

(a) Allow the councils to determine their own fiscal policies independently of their fiscal agents and make expenditures of funds subject only to a budget approved by the U.S. Office of Education.

(b) Require the councils to adhere to all regulations applicable to their designated fiscal agents.

(c) Have the Office of Education promulgate specific fiscal regulations for councils that use a State agency or another public agency as their fiscal agent.

(d) Require a council, which is constituted as a State agency, to seek the opinion of the State Attorney General with regard to its fiscal independence.

ISSUE 6. LOCAL ADVISORY COUNCILS

Local educational agencies and postsecondary institutions are required by the Act (section 105(g)) to establish local advisory councils to provide advice on current job needs and on the relevancy of courses being offered to meet these needs. The new Act addresses the composition of these councils in general terms -- "members of the general public, especially of representatives of business, industry, and labor." Furthermore, no statutory guidance is provided on the certification, operation, or consultation requirements of the council, although the State advisory council, upon request, may render technical assistance to the local council with respect to its establishment and operation. Thus, the necessity for clarity and specificity in the regulations concerning matters of composition, certification, consultation, and operation of these councils is in question. Commenters are invited to make recommendations and suggestions as to what, if any, guidance the Commissioner may provide in the regulations for the effective functioning of these councils.

ISSUE 7. STUDENT ORGANIZATIONS

Although the efforts by some vocational educators to have more explicit language included in the new Act in order to provide Federal funds for the activities of student organizations were not successful, it seems apparent that Congress was satisfied that no more and no less

(e) State plans and other policy statements will be made available to the public; and

(f) Use of funds expended for the handicapped will be consistent with the State plan submitted under the Education of the Handicapped Act.

Although section 106 makes reference only to assurances, section 109(a) provides that the Commissioner shall not approve a State plan until he or she is satisfied that adequate procedures are set forth to insure that the assurances of the general application will be carried out. The question, therefore, is how should the State board set forth the procedures it will employ to insure that the assurances of the general application will be carried out? For example, unless the State board provides the Commissioner with the specific factors used in the distribution formula and the procedures followed in such allocation, it would be extremely difficult for the Commissioner to determine if the State is basing the distribution of funds upon the appropriate statutory factors (section 106(a)(5)).

Alternatives

(a) Require the State board to submit in the general application both the assurances and the procedures that will insure that the assurances will be carried out. Once this general application of assurances and procedures is filed with the Commissioner, it will be binding on the State every year in the operation of programs until, as conditions and circumstances may demand a change in procedures, the submission is appropriately amended.

(b) Require the incorporation of these procedures in the five-year State plan, but not in the general application. Under this arrangement, the State must describe in its annual accountability reports the degree to which the State has effectively used these procedures.

(c) Characterize the submission of these procedures as a precondition of grant eligibility. Under this alternative, the description of the procedures used by the State may be submitted to the Office of Education independently of the general application, State plan, and annual accountability reports. The procedures, however, must be on file with the Commissioner in order for the State to receive the Federal allotment.

ISSUE 9. VOCATIONAL GUIDANCE AND COUNSELINGS

The new Act (section 134) gives increased emphasis to vocational guidance and counseling by requiring that not less than 20 percent of the funds made available to the States for program improvement and supportive services shall be used for guidance and counseling. Also funds may be used for related vocational guidance and counseling activities in research, exemplary and innovative programs, curriculum development, vocational education personnel training, grants to assist in overcoming sex bias, special programs for the disadvantaged, and consumer and homemaking education.

The new Act is much more comprehensive and more highly prescriptive than the one it replaces. It supports vocational development programs and services in guidance and counseling for children as well as youth and adults, thus including a greater range and variety of persons to be served. It emphasizes the initiation, implementation, and improvement of the quality of programs and activities. It stresses a broadened purpose of providing counseling and guidance assistances and experiences which lead to greater understanding of both the educational and vocational options in one's total development. It considers both educational and job placement services for all levels and kinds of occupations, including those for entering professions requiring a baccalaureate or higher degree.

Notably, the new Act requires training for counselors in ways of overcoming sex role stereotyping and specifically provides consideration for youth offenders, adults in correctional institutions, bilingual programs, out-of-school individuals and those with other special needs. At two points in the new Act (section 105(d)(3) and section 112(b)(1)(A) there is the requirement that an evaluation be made of the effectiveness of programs, services, and activities supported with Federal funds. Section 108(b)(2)(B) requires an annual statement of the results achieved with those funds.

In view of the increased emphasis on vocational guidance and counseling, the Commissioner seeks comments and suggestions regarding the development of appropriate regulations. The following exemplify specific areas of concern of the Commissioner:

(a) Criteria for providing and evaluating educational and occupational placement services related both to vocational education and to occupations requiring a baccalaureate or higher degree, hence emphasis on placement of individuals no matter where or when they exit from the curriculum.

(b) Ways of avoiding a sharp cleavage or a division of funds between counseling for occupations that require a baccalaureate or higher degree and those that require less formal training, and instead placing emphasis on each person's total lifetime development and the need for differential (such as occupational and educational) guidance and counseling at different points in development and for different reasons.

(c) Criteria by which the Commissioner can determine whether each State has complied "insofar as is practicable" with the provisions of section 134(b).

(d) Ways of avoiding imbalance of funding programs implemented for better understanding of vocational development as part of total development as opposed to job selection and placement.

(e) Ways of determing the impact of new vocational development emphasis on school dropouts and juvenile offenders.

(f) Criteria for determining effectiveness of training and retraining of administrators and all faculty to reach agreement on and to carry out goals of guidance as set forth in the Act.

(g) Criteria for establishing vocational resource centers to meet the special needs of out-of-school individuals.

ISSUE 10. DETERMINATION OF ACADEMIC HANDICAPS

For the purposes of Subpart 4 of Part A (Special Programs for the Disadvantaged), section 195 defines the term "disadvantaged" as "persons (other than handicapped persons) who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs under criteria developed by the Commissioner based on objective standards and the most recent available data." The regulations for the VEA of 1968 defines "disadvantaged" as "persons who have academic, socio-economic, or other handicaps that prevent them from succeeding in vocational education or consumer and homemaking programs designed for persons without such handicaps, and who for that reason require specially designed educational programs or related services. The term includes persons whose needs for such programs or services result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large, but does not include physically or mentally handicapped persons (as defined in this section) unless such persons also suffer from the handicaps described in this paragraph."

It should be noted that the new Act (section 195(16)) defines "disadvantaged" as "persons who have academic or economic handicaps." Before criteria can be developed to identify the disadvantaged, the phrase "academic handicaps" should be clarified in order to apply objective standards.

The House Report No. 94-1085 uses the term "education for disadvantaged persons" in the sense that someone is not succeeding in the regular academic program and risks dropping out of school. Since the Act indicates that special assistance will be provided only for those students in vocational education, it appears that the intent of the Act is to provide assistance for all students in vocational classes who are not succeeding and are potential dropouts. Public comment is invited on the following (and any other) alternatives:

(a) Should academic handicap be equated with underachievement in the regular school program and determined by performance records to be at least one year below grade level?

(b) Should academic handicap be determined by school tests and student performance which indicate that the student needs help in one or more academic areas in order to succeed in the regular school program?

(c) Should academic handicap be determined by the instructor when a student cannot complete the assignments that are accomplished by the other students in class?

ISSUE 11. PERMISSIBLE NUMBER OF HOURS OF WORK UNDER THE WORK-STUDY PROGRAM

Since the adoption of the VEA in 1963, work-study programs have provided employment for students who have been accepted for enrollment as full-time students or have been in full-time attendance in vocational education programs and have been in need of the earnings to commence or continue their vocational education program.

Whereas section 182 of the current Act contained a ceiling of 15 hours per week and a fixed monetary limit of $350 per year, section 121 of the new Act provides that pursuant to regulations developed by the Commissioner "no student shall be employed under such work-study program for more than a reasonable number of hours in any week in which classes in which he is enrolled are in session."

The Commissioner may propose in the Notice of Proposed Rulemaking to increase the present ceiling of 15 hours, with the caveat that an LEA may reduce this maximum if:

(a) There is a failure on the part of the student to maintain satisfactory scholastic standing, or

(b) Financial need of the student does not warrant the maximum number of hours of employment.

Comment is invited from the public on the issue of what constitutes a reasonable number of hours of employment per week for students in a work-study program.

ISSUE 12. ACCOUNTABILITY AND EVALUATION

The Commissioner seeks help, in the form of comments and recommendations, with regard to certain issues and questions about the requirements for accountability and evaluation. For several years the Office of Education has been adversely criticized for its inability to report on the effectiveness of Federal assistance to vocational education in terms of the success of vocational students in obtaining and keeping jobs.

For example, in its Report (No. 94-1085) on H. R. 12835, the House of Representatives insists that in the future the States must evaluate their programs in those terms. There is also a requirement in the new Act for making a determination (evaluation) of the "effectiveness" and "results" of programs, services, and activities supported with Federal funds. In any case, it would seem that the evaluation data should be susceptible to aggregation across all the States.

Specifically, the following questions need to be answered:

(a) How should the terms "program completers" and "program leavers" be defined (section 112(b)(1)(B))?

(b) How long after "completing" or "leaving" the program should the follow-up of each student of vocational education begin, and for how long should the follow-up continue (section 112(b)(1)(B))?

(c) What "statistically valid sampling techniques" are most appropriate for use in the annual evaluation, if the resulting data are to be aggregated across all States (section 112(b)(1)(B))?

(d) What should be the criteria (apart from those given for dealing with "completers" and "leavers") for determining and reporting annually on the "effectiveness" and "results" of programs, services, and activities supported under the new Act (sections 105(d)(3), 108(b)(2)(B), and 112(b)(1)(A))?

ISSUE 13. CONSUMER AND HOMEMAKING EDUCATION

Congress has amended the VEA of 1963 to expand the scope of the consumer and homemaking education programs, services, and activities at all educational levels for the occupation of homemaking to encourage:

(a) Greater participation of both males and females;

(b) Elimination of sex stereotyping in curriculum development;

(c) Provision for bilingual instruction in consumer and homemaking education programs, where appropriate; and

(d) Outreach programs giving consideration to special needs, such as those of the aged, young children, school-age parents, single parents, handicapped persons, educationally disadvantaged persons, and programs connected with health care delivery systems, and programs providing services for courts and correctional institutions.

While continuing to recognize the importance of consumer and homemaking education programs for preparing persons for the occupation of homemaking, Congress in section 150 of the new Act emphasizes that (1) this occupation is vital for everyone; and (2) consumer and homemaking education programs should address preparation of both males and females for combining the roles of homemaker and wage earner.

Additionally, Congress, in amending this section, urges the States to encourage the funding of programs which seek the elimination of sex stereotyping through the development of non-sex-stereotyped curriculum materials.

ISSUES

(a) What specific factors should be required by the regulation to ensure greater availability of consumer and homemaking education programs to both males and females?

(b) How may the Office of Education ensure that States encourage the funding of consumer and homemaking education programs which place emphasis on the preparation of males and females for combining the roles of homemaker and wage earner?

(c) How can the Office of Education ensure that States encourage the utilization of non-sex-stereotyped curriculum materials in consumer and homemaking education programs which deal with:

(1) increased numbers of women working outside the home;
(2) increased numbers of men assuming homemaking responsibilities;
(3) the changing career patterns of females and males; and
(4) new laws relating to opportunity in education and employment?

(d) What changes in instructional methodology, course content, or format would result in consumer and homemaking education programs which are more attractive to participants of both sexes at all educational levels?

(f) What criteria and reporting provisions should be used to measure whether a State has achieved its goals as set out in its (1) five-year plan and (2) annual plan with respect to the funding of consumer and homemaking education programs?

(g) How can SEAs and LEAs encourage, where appropriate, the development and sharing of bilingual instructional materials (e.g., leaflets on consumer education, nutrition education which are available in English and language other than English) for consumer and homemaking education programs?

(h) How can SEAs and LEAs ensure that consumer and homemaking education programs encourage outreach programs for youth and adults, with consideration being given to the special needs of the aged, young children, school-age parents, single parents, handicapped persons, and the educationally disadvantaged?

(i) How can States continue to improve the quality of these programs through ancillary services?

ISSUE 14. ACHIEVING EQUITABLE DISTRIBUTION OF ASSISTANCE UNDER BILINGUAL VOCATIONAL PROGRAMS

Both the Bilingual Vocational Training Program (section 184) and the Bilingual Vocational Instructor Training Program (section 186) provide authority for the Commissioner to approve an application for assistance if the Commissioner determines, where feasible, that "equitable distribution of assistance...within that State" will be achieved (section 189B). The Commissioner is required to consult with the State board in order to achieve equitable distribution. The legislative history does not provide guidance on what is intended by "equitable distribution of assistance within that State." It may refer to geographic distribution in the State, although some States have large concentrations of persons of limited English-speaking ability in a few areas while other States have persons of limited English-speaking ability scattered throughout the State. Alternatively, the statutory language may refer to the distribution of assistance among the several different language groups within a State even though it appears that some States have concentrations of persons of limited English-speaking ability from only one language group. Public comment is invited with respect to the interpretation of this clause.

With respect to the Bilingual Vocational Instructor Training Program (section 186), the Commissioner seeks public input on the standards to be used to determine adequacy of language capabilities of the instructor in the language, other than English, which will be used in the bilingual job training program. Should the determination, for example, be based upon the applicant institution's certification that instructors possess adequate language capability? Or should the applicant institution be required to submit to the Commissioner results of a language test administered to the instructors which would indicate the level of language proficiency?

ISSUE 15. APPEAL OF STATE BOARD DECISION TO THE COMMISSIONER

The Act provides for the active participation of designated agencies, councils, and individuals in formulating the five-year State plans and the annual program plans. If there is a disagreement with the State board's decision to include certain provisions in the plan the council, agency, or individual objecting to the provision, may appeal the board's decision to the Commissioner. In accordance with section 107(a)(1), the Commissioner "shall determine whether the State board's decision is supported by substantial evidence, as shown in the State Plan, and will best carry out the purposes of the Act."

What criteria should the Commissioner apply to determine whether there is substantial evidence that the proposed State Plan "will best carry out the purposes of the Act?"

OTHER ISSUES

The Commissioner of Education welcomes comments, advice, and guidance from any member of the general public on any of the issues set forth in this Notice of Intent and on any other issues related to the new Act. We hope that this Notice of Intent will both benefit the development of regulations and promote an understanding of the process.

QUESTIONS AND ANSWERS

Many specific questions were raised by interested persons with respect to the implementation of the Act. Some of these issues raise important policy considerations and have legal significance. Recognizing that the goal of a uniform position on these issues can best be achieved through publication in the FEDERAL REGISTER, the Commissioner has decided to issue the following questions and answers as supplementary information to the regulation.

Question No. 1: To what part of the Act does the section 106(a)(5) funding formula apply?

Answer: The section 106(a)(5) funding formula must be applied to all Federal funds distributed under sections 120, 134, 140 and 150. In addition, certain parts of the Act impose other special funding criteria, priorities, and conditions which must be considered. For example, both the work study program (section 121) and cooperative vocational education program (section 122) require that priority in funding be given to areas of high youth dropouts or youth unemployment.

Question No. 2: Is it permissible for the State education agency (SEA) to contract with another agency to fulfill the requirement of full-time personnel being assigned to work to eliminate sex discrimination and sex stereotyping?

Answer: The SEA may contract for personnel to assist the State board in this capacity, but the contract must specify that the personnel will work full-time to eliminate sex discrimination and sex stereotyping from vocational education programs by performing the functions listed in Sec. 104.75. If the personnel are hired under contract, the State agency is as responsible for the performance of the personnel as it would be if the personnel were employed directly by the State board.

Question No. 3: What should the qualifications be of the full-time personnel to eliminate sex bias, sex discrimination, and sex stereotyping?

Answer: Section 104.72(b) requires the State to match the qualifications of the applicants with the responsibilities of the job. The responsibilities are set forth in Sec. 104.75. In addition, the person selected should have a demonstrated commitment to the elimination of sex bias, sex discrimination, and sex stereotyping.

Question No. 4: How can a State department of education legally monitor the personnel practices of local educational agencies who are, for all practical purposes, autonomous?

Answer: Section 104(b)(1) of the Act requires that the full-time personnel to eliminate sex bias monitor the implementation of laws prohibiting sex discrimination. In a State where the local educational agencies have a great deal of autonomy and the State personnel have no authority to enforce changes, the LEA should have no objection to the full-time personnel visiting to observe their personnel practices, make suggestions, and report violations of Titles VI and IX.

Question No. 5: Does the certification contained in Sec. 104.171(g) detract from the requirements in Sec. 104.75(j) which require the full-time personnel to review and submit recommendations on the State plan?

Answer: No. The certification in Sec. 104.171(g) does not preclude inclusion of any comments the full-time personnel wish to make. Under Sec. 104.75(h) and (j), the full-time personnel must make information readily available to the State board and the Commissioner and must review the State plan and submit recommendations on it. Comments on the State plan may be submitted with the certification or at any other convenient time.

Question No. 6: May a vocational education student be appointed to the State advisory council pursuant to section 105(a)(20) of the Act even though the individual will no longer be a student after two years?

Answer: Yes. Since members of the advisory council must be appointed for terms of three years, an appointment held by a student who is involved in vocational education for a maximum of two years would become vacant after the individual's status as a student expired. The appointing body, therefore, would be required to fill the vacancy for the unexpired term (Sec. 104.92 (c)(2)).

Question No. 7: Must the annual program plan provide information on the allocation of Federal funds to each eligible recipient?

Answer: Yes. Section 108(b)(1)(B)(ii) of the Act provides that the annaul program plan must "set out explicitly the proposed distribution of such funds among eligible recipients."

Question No. 8: Are there any complaint procedures available to parents, students, and other individuals to the State educational agency?

Answer: Although the Act does not require the State to adopt a formal grievance procedure for parents, students, and other individuals, the State may wish to develop procedures for resolving these complaints. These procedures might include specific time limits for investigation and resolution of complaints, an opportunity for the complainant to present evidence to the State educational agency, and the dissemination of information concerning these procedures. In addition, the complaint procedure for violations of Title IX are contained in 45 CFR 86.8(b).

Question No. 9: How must the State make the five-year plan and annual program plan reasonably available to the public in accordance with section 106(a)(9)?

Answer: The State should make the plans readily available in places such as libraries, community colleges, and local school districts. With regard to members of the general public requesting copies of the plans, the State may wish to follow the standards and fee schedule of the Department's regulations under the Federal Freedom of Information Act (Pub. L. 90-23, 45 CFR Part 5).

Question No. 10: At what stage must the State make the plans available to the public?

Answer: Since the public must have some familiarity with the content of the planning documents prior to the public hearing, the State should make drafts of the plans available prior to the public hearings.

Question No. 11: When will the Commissioner make the State plans available to the public?

Answer: Under the Department's Freedom of Information Regulations (45 CFR Part 5), "State plan material" is specifically listed in the Appendix as "Generally Available." This means that State plans sent or delivered to the Office of Education, or letters relating thereto, will be available. Therefore, both the five-year State plan and annual program plan will be available to members of the public, on request for the document, as soon as the document is received by the Office of Education in a regional office or the central office. The document will be available on receipt, before the Commissioner's review or approval.

Question No. 12: If the State legislature supports the entire cost (other than tuition payments) of operation of postsecondary area vocational schools, how would the relative financial ability of the institution be established pursuant to section 106(a)(5)(B)(i) of the Act?

Answer: An institution with no local tax base for support would have to calculate its relative financial ability on the amount of funds the State legislature makes available to it.

Question No. 13: Two commenters questioned the appropriateness of participants (other than those representatives specified in section 107(a)(1)) being involved in the development of the peon.

Answer: While a State may involve other participants, only one member of each of the designated agencies, councils, and individual specified in section 107(a)(1) of the Act may be involved in the development of the peon.

Question No. 14: May the State board design the membership of the section 107 planning group in such a way that the State educational agency's personnel constitute a majority of the voting membership?

Answer: Membership on the planning group is limited to one official representative for each of the agencies, councils, and individual categories specified in section 107(a)(1) of the Act. One person may be the State agency's representative for more than one of the ten categories if that State agency has multi-responsibility. There is, however, no requirement for a vote by each representative.

Question No. 15: Should CETA be included "among the various institutions of the State" under section 107 (b)(2)(A)?

Answer: No. CETA is not an institution for purposes of Sec. 107(b)(2)(A). Through the coordination efforts in Sec. 104.188 the State board will have data on programs conducted under CETA and will consider these data in its planning.

Question No. 16: What basis should the State use to determine if a shift in funding for programs in secondary schools has occurred in accordance with Sec. 104.315?

Answer: The State should rely on the 601T forms submitted to the Office of Education for fiscal years 1975 and 1976. These reports should specify the amounts spent at the secondary level. If projected Federal expenditures for programs in secondary schools in either fiscal year 1978 or 1979 are not within 95 percent of the figures reported for fiscal years 1975 or 1976, then a justification must be set forth in the five-year State plan.

Question No. 17: How may a State comply with the section 107(a)(2) and section 108(a)(2) requirement to provide sufficient public notice for public hearings on the five-year plan and annual program plans?

Answer: The State should mail invitations to organizations and individuals in the State having an interest in vocational education and civil rights, publish notices of the hearings in major newspapers, and place announcements on television and radio as appropriate throughout the State, beginning 30 days prior to the hearings.

Question No. 18: Must the section 110 minimum percentages for the national priority programs (handicapped, disadvantaged, postsecondary) be computed against the allotment under section 102(a) prior to the 80/20 split for subparts 2 and 3?

Answer: No. Regardless of whether the computation is made prior to or after the 80/20 division, the minimum percentages must be based on the total allocation, not just the 80 percent for subpart 2 or the 20 percent for subpart 3.

Question No. 19: Must the State pay exactly 50 percent, at least 50 percent, or up to 50 percent for the three national priority programs in section 110 of the Act?

Answer: The State must pay at least 50 percent of the cost of vocational education programs for the national priority programs in section 110 of the Act (Sec. 104.303).

Question No. 20: May a State use local funds earmarked for local administration as part of the State's matching share for State administration under section 111(a)(2)?

Answer: No. The State matching share must be earmarked for State administration, not local administration. The non-Federal source of funding for State administration, however, may be generated at either the State or local level.

Question No. 21: May a State use tuition fees to meet the statutory matching requirements?

Answer: No. In accordance with Sec. 100b.58 of the General Education Provisions Regulations, tuition and fees collected may not be included as part of the Federal or non-Federal share of expenditures under any Federal program.

Question No. 22: Does the Sec. 104.321 provision of maintenance of fiscal effort allow the State to use a per student basis one year and then change and use aggregated cost the next year?

Answer: Yes. The State may annually select either of the two bases. Local educational agencies and postsecondary institutions may also select either of the two bases.

Question No. 23: To determine maintenance of fiscal effort, will the Commissioner compare the amount between the present and previous year or between the preceding and second preceding year?

Answer: In accordance with Sec. 104.322, the Commissioner will determine maintenance of effort by comparing the preceding year to the second preceding year.

Question No. 24: Are the evaluations of programs conducted by the State board available to the general public?

Answer: Yes. The annual accountability report, which is available to the public, must contain a summary of the evaluations of programs conducted by the State.

Question No. 25: What does the requirement in section 120(b)(2) of the Act that the State board make a specific finding in each instance of funding for stipends in section 120(b)(1)(G) of the Act pertain to?

Answer: Each eligible recipient in the State desiring to provide stipends to students shall include an assurance in its local application to the State board that students to receive stipends have acute economic needs which cannot be met due to inadequate funding in other programs (Sec. 104.573).

Question No. 26: Section 104.402 of the regulation gives the State board wide latitude and discretion in regard to the collection and reporting of data to evaluate the effectiveness of its programs. Will it be possible to aggregate across all States the data thus collected and meet the reporting requirements of section 112(b) of the Act?

Answer: Aggregation of the data on program completers and leavers required by section 112(b)(1)(B) of the Act will be assured by use of the uniform definitions and information elements and the instructions and standards required by Secs. 104.404(d) and 104.405 of the regulation. As for the evaluation required by section 112(b)(1)(A) of the Act, it is the Commissioner's preference that, in view of the increased burden of evaluation under the new

Act and the as yet undetermined nature of the new national reporting and accounting system mandated by section 161 of the Act, the State board should be given considerable latitude. After a year of experience with the new Act, it may be found desirable to reconsider the reporting requirements.

Question No. 27: What programs are eligible for funding under the assurance which specifies "of significant assistance to individuals enrolled in making an informed and meaningful occupational choice as an integral part of a program of orientation and preparation"? At what grade level may these programs be offered?

Answer: Prevocational or exploratory programs which are designed to be of significant assistance to individuals enrolled in making an informed and meaningful occupational choice may be funded under the Act. Specifically, programs in industrial arts may be supported with funds under section 120 of the Act beginning at the secondary level (as defined by the State). Exemplary and innovative programs under section 132, consumer and homemaking programs under section 150, and vocational guidance under section 134 may be provided at all levels.

Question No. 28: May subpart 3 funds for program improvement and support services be used for the programs for the special populations described in section 120(b)(1)(L)?

Answer: No. The program outlined in section 120(b)(1)(L) is included among the purposes of the subpart 2 basic grant and, therefore, must be funded under subpart 2.

Question No. 20: May a State satisfy the requirement in Sec. 104.502(b) by providing regular vocational education programs without special courses or instruction in how to seek employment for the special populations listed in Sec. 104.621?

Answer: No. The State must provide these special populations with vocational education programs which offer special instruction in how to seek employment and placement services for the graduates.

Question No. 30: Is a correctional institution of the State eligible to receive funds?

Answer: Yes. Under section 195(13) only LEAs or postsecondary institutions are "eligible recipients." The State or eligible recipient may, however, enter into an arrangement with the agency administering correctional institutions for the provision of vocational training.

Question No. 31: May funds available for establishing day care centers be used for the establishment of centers in schools? May these centers also be used as a laboratory for training students for employment in child care occupations?

Answer: Yes. The day care centers may be established in the schools and may serve as a learning laboratory for training students for employment in child care occupations.

Question No. 32: May a State use section 130 funds to support research activities in LEAs?

Answer: Yes. Section 130 authorizes the Commissioner to allocate funds to the States for, among others, the purposes of section 131. Section 131(a) authorizes the State to support a research coordinating unit (RCU) for research by the RCU itself or for contracts by the RCU for research. Thus, the RCU may enter into a contract with the LEA for research.

Question No. 33: Does the Act require the State to match funds for research, or for exemplary projects, or curriculum development projects, on a program-by-program basis?

Answer: No. Section 111 of the Act does not require a program-by-program matching by the State in programs under sections 130, 131, 132, or 133. See Sec. 104.302 of the regulation as to matching on a State-wide basis and the exceptions.

Question No. 34: May States use funds under Sec. 104.772 to train and upgrade high school counselors to enable them to serve vocational education students better?

Answer: Yes. If the State chooses to use its funds for this purpose, it must incorporate this type of training in its approved five-year State plan and annual program plan for vocational education. Sections 104.772 and 104.773 of the regulations address this point.

Question No. 35: May a State use its vocational education personnel training funds to train interpreter-tutors to work with deaf students of vocational education?

Answer: This use of the funds would be allowable if it is set forth in the approved five-year State plan and annual program plan for vocational education.

Question No. 36: May an LEA use funds under subpart 4, Part B of the Act, "Emergency Assistance for Remodeling and Renovation of Vocational Education Facilities" for new construction?

Answer: No. Section 191 of the Act is clear that this new program is for "modernization of facilities and equipment and the conversion of academic facilities necessary to assure that such facilities will be able to offer vocational education programs which give reasonable promise of employment." The same section refers to "remodeling and renovation" of facilities. There is no authorization in subpart 4 for construction of new facilities. Use of funds for "construction of area vocational education facilities" is authorized in section 120(b)(1)(E).

Question No. 37: Are private, non-profit rehabilitation centers and workshops eligible for emergency remodeling funds under subpart 4?

Answer: No. Section 191 of the Act states, as eligible, only "local educational agencies in urban and rural areas."

Question No. 38: Are leased premises eligible for emergency assistance for remodeling under subpart 4?

Answer: Yes. The Act does not state whether leased premises are eligible for emergency remodeling assistance. Determinations will have to be made on a case-by-case basis. Facilities leased by an LEA under a 99-year lease should be treated as facilities owned by an LEA. Where facilities are leased on a short-term lease, the LEA might not score points under criterion 9 (Sec. 105.504(b)(9)), as use of funds to renovate premises on a short-term lease might not be economical.

COMMENTS AND RESPONSES

The following comments, suggestions, and criticisms were submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change is deemed necessary or appropriate. The comments are grouped based on the sections affected, arranged in sequence.

PART 104 - STATE VOCATIONAL EDUCATION PROGRAMS

SUBPART I -- STATE ADMINISTRATION

Sec. 104.2 Purpose: Meaning of "where necessary maintain."

Comment. A commenter pointed out that one of the purposes of the new Act is to assist the States "in extending, improving, and, where necessary, maintaining existing programs of vocational education"; that the new Act specifically inserted "where necessary" in order to give the maintenance of existing programs a lesser priority than that given to expanding and improving programs; and that the proposed regulation fails to carry out that intention. Another commenter asked for a definition of "where necessary."

Response. In section 101 of the Act, Congress set forth the purposes of the new Vocational Education Act. The regulation, in Sec. 104.2, repeats the language of section 101 exactly, leaving "extending" and "improving" programs of vocational education ahead of "maintaining" existing programs, and leaving in the phrase "where necessary" as modifying "maintaining existing programs." The Conference Report (Report No. 94-1701, p. 214) states: "The determination of necessity is to be made by appropriate State and local officials. The phrase is not intended to authorize the Commissioner of Education to apply a strict litmus test of absolute necessity before an on-going program can be funded. However, it is intended to encourage States to use their limited amount of Federal funds to invest in the often-expensive start-up costs of new programs." The maintaining of existing programs should be the subject of study in the preparation of the five-year State plan and the annual program plan and accountability report. Since the maintaining of existing programs is such a broad subject, no definition of "where necessary" has been attempted. No change is made in the regulation.

Sec. 104.2 Purpose: "Youth with specific learning disabilities."

Comment. A commenter recommended that Sec. 104.2(a)(4) of the state ment of "purpose" be amended to change the phrase "those with special educational handicaps" to "youth with specific learning disabilities."

Response. The "purpose" as set forth in Sec. 104.2 is taken verbatim from section 101 of the Act. This statement of purpose was not changed by the Technical Amendments, P.L. 95-40. The Technical Amendments, however, include in the definition of handicapped, "persons with specific learning disabilities." A corresponding change is made in the definition of "handicapped" in the Appendix to Part 104 of the regulations.

State Board

Secs. 104.31 - 104.33 State board staff.

Comment. A commenter recommended that the regulation include requirements for an adequate State board staff to carry out its responsibilities and functions, including a full-time director.

Response. The recommendation is accepted. A section (Sec. 104.34) is added to require the State board to provide for a State staff sufficiently qualified and in sufficient number to administer properly the State's program of vocational education. Through oversight this provision was omitted from the NPRM. Section 104(a) of the Act places great responsibility on the State board for administration and leadership. The requirement for adequate staffing by the State board is entirely appropriate.

Sec. 104.32 State board: Definition of the term "coordination."

Comment. Several commenters suggested that the regulation be amended to define the term "coordination." These commenters also inquired: (1) if the responsibilities of the State board for coordination of the development of policy and the development of the State plans were intended to limit the authority of the State board, and (2) if the State board is to limit its coordination activities to the groups identified in clauses (A) through (J) of section 107(a) of the Act.

Response. In requiring the State board to coordinate the development of policy and the development of the State plans with the agencies, councils, and individuals identified in section 107(a) of the Act, it was the intent of Congress to establish a mechanism to strengthen the planning function of the State board, rather than limit its authority. To carry out the mandate of section 104(a) of the Act, the State board convenes the planning group, established by section 107(a) of the Act, for at least three meetings during each fiscal year concerning the development of the annual program plan and accountability report and for at least four meetings concerning the development of the five-year State plan.

Although only representatives of the agencies, councils, and individuals identified in section 107(a) of the Act must participate in the decision-making activities of the planning group, the State board is responsible for coordinating the State plan with any group or individual having an interest in vocational education. Section 107 of the Act requires that the State board hold public hearings to provide every interested person or group the opportunity to participate in the development of the State plan. No change is made in the regulation.

Sec. 104.32 Responsibilities of the State board.

Comment. A commenter suggested that it may be misleading to list only the coordinative responsibilities of the State board in Sec. 104.32 of the regulation. To correct this situation, it was suggested that the regulation be changed to read, "The State board's responsibilities shall include but not be limited to. . . ."

Response. This recommendation is accepted. Section 104.32 of the regulation follows very closely the language of section 104(a) of the Act which sets forth the (non-delegable) responsibilities of the State board. In order to assure that the regulation provides a clear interpretation of the intent of the Act, the first sentence of Sec. 104.32 of the regulation is amended to read, "The responsibilities of the State board include (but are not limited to):"

Comment. A commenter expressed the view that it was the intent of Congress to have the inspiration for the planning of the vocational education programs arise from the local educational level where the needs of the student are "best seen and cared for."

Response. Each local educational agency and postsecondary educational institution that participates in the vocational education program submits an application to the State board. The State plan is formed, in part, from the vocational education programs that are identified in the applications from local educational agencies and postsecondary institutions. Since the planning group is responsible for assuring that the State plan provides a comprehensive and coordinated vocational education program that is responsive to the total vocational education needs of the State, no change is made in the regulation.

Sec. 104.32(d) State board consultation with the State advisory council.

Comment. In noting that the regulation specifies that members of the State board are responsible for consulting with the State advisory council, a commenter suggested that it is also appropriate for the staff of the State board and the staff of the council to consult frequently on matters of mutual concern.

Response. Section 104.32(d) of the regulation is consistent with section 104(a)(1) of the Act which requires that the State board consult with the State advisory council regarding the planning and reporting of the State's vocational education programs. The regulation reflects the intent of Congress, which was to establish a procedure to ensure the participation of the State advisory council in the development of the State plans and accountability reports. It is not the intent of the Act nor the regulation to preclude, discourage, or hamper in any way the exchange of formal or informal communications between the State board and the State advisory council, or between the staffs of the board and the council. Consultation between the two staffs need not be required in the regulations. No change is made in the regulation.

Full-time Personnel and Functions to Eliminate Sex Discrimination and Sex Stereotyping

Secs. 104.71 - 104.76 More specific guidance on full-time personnel.

Comment. Many commenters requested more specific language in the regulations on the designation, support, and functions of the full-time personnel to eliminate sex bias. All felt that too many decisions were left up to the individual States and that the States need more guidance, particularly in this area.

Response. Although many decisions (such as placement of the personnel within the State structure, the number of personnel necessary) will be left to the States to make, changes have been made in Secs. 104.71-76 of the regulation in an attempt to strengthen and clarify the activities under these sections. These changes are spelled out in more detail in the following comments and responses.

Sec. 104.72 "Employment/designation" of full-time personnel.

Comment. A commenter felt that the words "designation" and "assign" in this section convey the impression that the State education agency must utilize personnel already employed by the agency to fill the positions under this section. Suggested instead was the use of the terms "employment/designation" and "employ/assign."

Response. The use of the terms "designation" and "assign" in Sec. 104.72 is not intended to indicate that current State agency personnel must be used to fill the positions under this section. There is no indication in either the Act or legislative history that such an interpretation is valid. In addition, the joint terms suggested by the commenter ("employment/designation" and "employ/assign") are not seen as clarifying the meaning. However, in light of other comments received, further clarification appears necessary; therefore, the terms "designation" and "assign" have been changed to "selection" and "select."

Sec. 104.72 Full-time personnel/personnel working full-time.

Comment. A number of commenters noted the difference between the language of the Act requiring "full-time personnel" and the language of the regulation requiring "personnel to work full time" on sex bias issues. Several of these commenters have requested that the language of the regulation be changed. Others, however, have opposed such a change on grounds that it might lead to hiring personnel to perform these functions on a less than full-time basis.

Response. The change of language in the regulation to "personnel to work full time" is intended to clarify the Act. It is apparent from the legislative history that Congress intended that the State have at least one professional working full time on the elimination of sex bias and sex stereotyping in vocational education rather than a person employed full time but working less than full time on the elimination of sex bias. Although personnel may be placed in any unit the State chooses, the professional personnel must work full-time on elimination of sex bias and sex stereotyping in vocational education. Thus, no change is made in the regulation.

Sec. 104.72 Placement of full-time personnel.

Comment. One commenter noted that neither the Act nor the regulation mandates the full-time personnel hired under this section to be employed by the State department of education, vocational education division. Therefore, this commenter interpreted this to mean that it is not necessary for personnel filling these positions to be employees of the State vocational division.

Response. The commenter is correct in this interpretation. It appears from the legislative history that Congressional intent was not to limit the State in placing this personnel within the State structure. Page 215 of the Conference Report (No. 94-1701) states that there is no intention "that the State must assign such personnel to the State board." Each State may decide where the personnel will function best. The personnel may operate within the vocational division or may work from another area. However, the personnel must work full time on elimination of sex bias and sex stereotyping in vocational educaiton. No change is made in the regulation.

Sec. 104.72 Criteria for selection of full-time personnel.

Comment. Many commenters expressed the concern that, unless criteria for the selection of the full-time personnel were set forth by the regulation, the positions might be filled with persons who are not qualified or who might compound the bias problems. The criterion most often suggested was that the persons chosen for these positions have demonstrated a commitment to the elimination of sex bias in educational programs. Other qualifications suggested include knowledge of sex bias problems and issues, leadership capability, vocational education background, creativity, patience, and determination. Several commenters felt that the States should be required to advertise the position widely and to assure that it be open to all applicants. One commenter proposed that there be a selection committee to be made up of individuals with knowledge of sex bias issues.

Response. The recommendation is accepted in part. The regulation will not prescribe specific criteria for the States to use in selecting the full-time personnel. As in selection of other State personnel, the criteria will vary from State to State; however, a paragraph has been added requiring that the States match the qualifications of the applicants with the responsibilities of the job.

Sec. 104.73(a) Definition of sex bias.

Comment. Several commenters expressed concern over the proposed definition of "sex bias." The difficulty stems from the statement that "as used in the Act and the regulations, sex bias... includes sex discrimination." One commenter remarked that bias and discrimination are not the same. Others were concerned that "sex stereotyping" had been left out. These commenters suggested that "sex stereotyping be added wherever "sex bias" is used in the regulations or that "sex stereotyping" be added to the final sentence in the definition on the use of "sex bias" in the Act and regulations. Still others favored discarding the proposed definition for a new one.

Response. The recommendation that the definition of sex bias be modified is accepted. The final sentence of Sec. 104.73(a) is deleted since it is confusing rather than clarifying. In addition, the use of the terms "sex bias," "sex discrimination," and "sex stereotyping" are clarified throughout the regulations.

Sec. 104.74 $50,000 Minimum.

Comment. Several persons commented on the $50,000 set by the regulation as a minimum for support of the full-time personnel. The comments were evenly divided regarding the words "at least $50,000." Some commenters felt it important to stress that this is a minimum, while others felt that the $50,000 is a specific amount set by the law to be no more and no less.

Response. There is nothing in the Act to prevent a State from spending more than $50,000 to support the full-time personnel, but a State may not spend less than that amount. To emphasize this point, the language of the regulation has been amended to read "not less than" $50,000.

Comment. A few commenters felt that the salary items (Sec. 104.74(b)(1) and (2)) should be combined to read "salaries for full-time staff," without making a distinction between professional and support staff.

Response. Section 104(b)(1) of the Act is interpreted to mean that the professional staff, but not necessarily the support staff, must work full time on the functions set forth in Sec. 104.75. The regulation does not mandate that clerical and other support staff work full time in this area. Thus, the question whether support staff must work full time is left to the discretion of the State. No change is made in the regulation.

Sec. 104.74(b) Allowable activities.

Comment. Many commenters were concerned that Sec. 104.74(b) was too restrictive regarding use of the $50,000. These commenters requested that items be added to the list of allowable expenditures, such as publications, workshops, and dissemination of information.

Response. The proposed language in Sec. 104.74(b) is reasonable in that it provides sufficient guidance to the States on the use of funds while being broad enough to include the additional list of activities suggested. The measure of a legitimate expense under this section is the degree to which it relates to the support of the personnel in carrying out the functions set forth in Sec. 104.75. No change is made in the regulation.

Sec. 104.75 Minimum requirements for accomplishing "sex bias" functions.

Comment. A number of commenters felt that the regulation should spell out the minimum requirements to accomplish the functions listed in Sec. 104.75. They felt that the full-time personnel needed specific guidance in fulfilling their responsibilities. Specific suggestions include development of a complaint process, a strengthened public information component, an annual report on the status of women in vocational education programs, and the use of the Title IX self-evaluation.

Response. Although the functions listed in Sec. 104.75 provide a framework within which the full-time personnel will work, some of the above suggestions offer more guidance and have been included. Requirements have been added to emphasize the public information function of the personnel, especially in assisting the State board in publicizing the State plan hearings. Also included are references to the Title IX complaint process and self-evaluation. Other more specific suggestions were not included, since the full-time personnel will develop a plan to implement the functions which will address the needs of the particular State, and further guidance was felt unnecessary.

Sec. 104.75(a) Reduce sex bias and sex stereotyping.

Comment. One commenter suggested that "sex bias" be added to the language in subsection (a) of Sec. 104.75 in addition to sex stereotyping.

Response. The recommendation is accepted. To clarify the regulation, "sex bias" has been added.

Sec. 104.75(d) Review of distribution of grants and contracts.

Comment. A number of commenters felt that review of the distribution of contracts as well as grants should be included in this function.

Response. The recommendation is accepted. Since the States' research, exemplary, and curriculum development programs will be conducted through contracts and since these areas also emphasize elimination of sex bias and sex stereotyping, it appears that review of contracts as well as grants would comply with Congressional intent.

Sec. 104.75(h) Availability of information.

Comment. Several commenters recommended that the language of this subsection be changed to require the full-time personnel to make information developed pursuant to the statutory functions available to the groups listed in Sec. 104.75(h) through the State board rather than supplying the information to the board as well as to the other groups.

Response. The regulation is consistent with the Act which states that the information will be made available to the State board, the National and State Advisory Councils on Vocational Education, the State Commission on the Status of Women, the Commissioner, and the general public. In addition, making information available to the general public through the State board would be difficult. Therefore, no change is made in the regulation.

State Advisory Council

Sec. 104.91 State advisory council establishment.

Comment. Commenters pointed out that the regulation does not conform to the Act regarding the appointment of the State advisory council in the case of States in which the members of the State board are elected. The regulation refers only to the "State board" while section 105(a) of the Act uses the term "State board of education."

Response. While this appears to be an inconsistency, the legislative history supports the reference to the State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State. In a great majority of the States, the State board for vocational education serves also as the State board for education. There appears to be no reason for denying to an elected State board for vocational education the authority to make the appointments to the State advisory council. Therefore, the broader term "State board" is not changed in the regulations.

Sec. 104.92(a) State advisory council membership.

Comment. Several commenters suggested that additional groups should be represented on the State advisory council. The additional group representatives suggested were: State planning agencies, adult education, homemaking, college career planning and placement services, State's agency on aging, and the planning and coordination agency for postsecondary education.

Response. Since categories mandated by section 105 of the Act number twenty, many of which imply multiple representation, it appears unwise to require additional appointments, thereby making the councils too large, unwieldly, and costly to operate under existing budget limitations. Councils are urged to obtain input from interested groups, not directly represented by membership, through their evaluation and public hearing process. No change is made in the regulation.

Sec. 104.92(a) Women on State advisory councils.

Comment. Many commenters suggested that Sec. 104.92(a)(17) include language to the effect that at least two women be required to fulfill the requirement. While the wording of the regulation is taken directly from the Act, it was clear that the Congress intended more than one woman to fill this category. Unless the regulation is so stated, there is danger of misinterpretation at the State level.

A commenter also recommended that the phrase "one or more persons" used in the sentence having reference to minority groups be changed to "women," which is the statutory language.

Response. The recommendation relating to the change in wording of Sec. 194.92(a)(17) from "one or more persons" is accepted.

Although a number of categories listed in this regulation use plural words, the determination of the actual number necessary for each category should be left to the appointing authority rather than have the regulations specify an exact number. Specifically, in the case of category (17), whether one or two women are appointed may depend on the number of women already appointed to other categories. The Commissioner, however, encourages the States to appoint at least two women to fulfill the requirement in category (17). No gurther change is made in the regulation.

Sec. 104.92(b)(3) Appropriate representation.

Comment. A great many commenters pointed out the need to define "appropriate representation," especially as it relates to the representation of women on the council. It was recommended that "appropriateness" be based on such criteria as the proportion of women and minorities in the State's general population, the State's work force, their representation in vocational education programs, or a combination of such factors. Further, it was suggested that the membership must include persons with an understanding about and commitment to remedy the consequences of sex and minority discrimination.

Response. The recommendation is accepted. While specific quotas are not prescribed, the final regulation includes a statement intended to implement Sec. 104.92(b)(3). In order to reflect effectively the diverse interests and needs of the general public served by the Act, the statement makes clear that the appointing authority shall appoint to the council a significant proportion of women, racial and ethnic minorities, and representatives of geographic regions in the State. The Commissioner considers the term "appropriate representation" to be representation which generally reflects the percentage of women or minorities in the population of the State or the percentage of women or minorities in the work force of the State.

Sec. 104.93 Liaison with State Advisory Panel for Handicapped.

Comment. Two commenters suggested a function of the State advisory council on vocational education be added requiring "appropriate liaison and coordination activities with the State Advisory Panel for the Handicapped."

Response. It is agreed that to insure consistency in planning and program implementation, liaison and coordination between the two agencies are essential. However, as a result of the Technical Amendments, Sec. 104.93(f) has been amended to include "special education" as one of the programs to be assessed for its part in the consistent, integrated, and coordinated approach to meeting the employment and training needs of the State. This provision, along with the required representative of the handicapped on the State advisory council, is intended to assure the necessary coordination. No change is made in the regulation.

Sec. 104.93(a) Council certification.

Comment. A commenter requested the deletion of the last sentence of Sec. 104.93(a) since this appeared to be a duplication of the certification required by the council representative in Sec. 104.171(b)(2).

Response. In addition to the certification by the council representative relating to the opportunity to participate in the planning process, the council itself must be consulted in the plan development process. Thus, the council has two avenues for involvement in the planning, with the latter being a greater commitment than that afforded other agencies. Since this procedure is statutorily mandated, no change is made in the regulation.

Sec. 104.93(d) State board evaluation.

Comment. A commenter objected to the word "assist" and stated that the law used the word "consult."

Response. Section 112(b) of the Act says that the State shall "consult" with the council and that the council shall "assist" the State in developing the plans. Since the regulation (Sec. 104.93(d)) uses the word "assist" in relation to assisting the State board, no change is made in the regulation.

Sec. 104.93 SACVE function - Evaluation.

Comment. Commenters suggested that the regulation provide additional direction with regard to certain of the council functions including the following: freedom to conduct whatever independent evaluation it chooses, requirement that data requested from the State board not to be denied, evaluation by the council be of State board programs and not LEA programs, the time, frequency and use to be made of the "employment needs" assessment, compatibility of council findings with State-wide goals of State board, relationship of councils to State Occupational Information Coordinating Committee and the State Manpower Services Council, kinds of technical assistance to be given local advisory councils and input into the evaluation process by the local councils.

Response. While the comments have merit, the regulation intentionally provides considerable flexibility to councils in dealing with the newly assigned functions and responsibilities. If problems persist, additional technical assistance may be provided by the staff of the National Advisory Council on Vocational Education or the Office of Education. No change is made in the regulation.

Sec. 104.94 Public meetings.

Comment. A commenter suggested that guidelines be provided for public meetings and that these meetings be held separately from hearings on State plans.

Response. The requirement for public meetings is well-established since this procedure was initiated through the Vocational Education Amendments of 1968. Since the council's public meeting is for a different purpose than the public hearings on the State plans, there is no justification for combining meetings. No change is made in the regulation.

Sec. 104.95(a) Staff.

Comment. A commenter suggested that professional and technical personnel be required to demonstrate a commitment to equal rights and sensitivity to the needs of populations being served. Another commenter requested deletion of the provision that the personnel not include members of the State board staff.

Response. Even though the qualifications for personnel suggested are desirable, the matter of personnel selection and the qualifications desired is a responsibility of the council. The exclusion of State board staff from serving as council staff is consistent with the Congressional intent of maintaining council independence from the administering agency. No change is made in the regulation.

Sec. 104.95(b) Compatibility with State policies.

Comment. Two commenters suggested that paragraph 104.95(b) be deleted since it is an infringement on the fiscal independence of the council.

Response. While it is agreed that the council should have independence from the program administrative agency, it was not intended that councils act outside the existing framework of State law and regulations on fiscal matters. Accordingly, the regulation is necessary to establish a degree of responsibility in fiscal matters and compatibility with other State agencies. This is intended to forestall excesses which could bring criticism of the council. No change is made in the regulation.

Sec. 104.96 Fiscal independence.

Comment. Commenters suggested that the regulation make clear that councils are to be solely responsible for the expenditure and use of their funds. Regulations should provide that if the State board is the fiscal agent, the council must certify that its selection was of its own initiative and not subject to influence by the State board. It was also suggested that the phrase "except as provided in Sec. 104.95(b)" be deleted.

Response. Section 105(f)(2) of the Act provides that the expenditure of council funds is to be determined solely by the council for carrying out its functions. However, as noted in the response under Sec. 104.95 (b) above, the councils cannot act outside the existing framework of State law and regulations on fiscal matters. The regulation makes it clear though that the responsibility for designating a fiscal agent is assigned directly to the council. No change is made in the regulation.

Sec. 104.97 Evaluation report.

Comment. Commenters suggested that the regulation require additional procedures related to the council evaluations, including public comment on the council's evaluation report, review of the content, techniques, and validity of the vocational education data system and assessment of the impact of vocational education programs on women and minorities.

Response. While all the suggestions are worthy of consideration by councils in performing their functions, the Congressional intent, as evidenced by the Act and legislative history, was to allow flexibility in the procedures used by councils. Since the Act requires at least one public meeting, a vocational education data system, and no discrimination on the basis of sex or minority groups, it is reasonable to expect that the council's evaluation will give consideration to these items. No change is made in the regulation.

Sec. 104.97 Evaluation by State advisory council.

Comment. A commenter recommended that the regulation require a written agreement between the State board and the State advisory council as to the role of each in evaluating programs.

Response. The State board and the State advisory council may wish to reduce their working agreement to writing. However, in the interest of keeping regulatory requirements to the minimum, the Commissioner has decided not to require a written agreement between the State board and the State advisory council. No change is made in the regulation.

Sec. 104.97 State board comment.

Comment. A commenter suggested that the council's evaluation report be accompanied by comments of the State board and that the response in writing to each recommendation accompany the State plan.

Response. The annual evaluation report is required to be submitted through the State board, at which time the board may attach comments if it desires. However, Sec. 104.241(b)(2) requires that the accountability report, which must be submitted by the State board, include the board's consideration of each recommendation in the council evaluation report. Therefore, no change is made in the regulation.

Local Advisory Councils

Sec. 104.111 Local advisory councils -- representatives of additional groups.

Comment. Many commenters suggested broadening the categories of membership required on the local advisory council so that the categories would be similar to the categories required of membership on the State advisory councils. Others recommended the addition of representatives of specific categories. Specific categories mentioned were: categories (17), (18), (19), and (20), described in Sec. 104.92(a) in relation to the State advisory council; women; racial, ethnic, or major language minorities; private schools; persons knowledgeable in vocational education (but not administration); manpower services; local prime sponsor councils under the authority of CETA; the State agency responsible for data collection; and community-based organization. Commenters particularly recommended that the phrase "shall be composed of members of the general public" be interpreted to include appropriate representation of women and minorities.

Response. The recommendations have been accepted in part. Since one of the main purposes of the Act is "to overcome sex discrimination and sex stereotyping in vocational education" and to "furnish equal educational opportunity" (sec. 101(3)), the Commissioner will require that an appropriate representation of women and minorities be represented on the local advisory council. Therefore, a new paragraph has been added to Sec. 104.111 to read as follows:

(d) Each eligible recipient shall establish a local advisory council which has an appropriate representation of both sexes and an appropriate representation of the racial and ethnic minorities found in the program areas, schools, community, or region which the local advisory council serves.

Sec. 104.111(b) Local advisory council establishment.

Comment. A few commenters asked whether the regulation governing the establishment of local councils precludes the possibility of LEAs establishing local advisory councils on a regional basis with other LEAs. In the same connection, some commenters asked whether one council may serve more than one eligible recipient.

Response. Section 104.111(b) of the regulations is based on section 105(g)(1) of the Act which provides in part that "local advisory councils may be established for program areas, schools, communities, or regions, whichever the recipient determines best to meet the needs of that recipient." The eligible recipient, therefore, has the option to establish a local council which also serves another eligible recipient in the same geographical region of the State. For example, an LEA and a community college in the same region may decide to establish one local council to advise both recipients. This arrangement may be highly desirable for both recipients in the event they are striving for greater articulation between secondary and postsecondary interests. Accordingly, no change is made in the regulation.

Sec. 104.111(d) Craft committees.

Comment. A commenter pointed out that the regulation implies that only advisory councils would be required at the local educational agency or postsecondary level, despite the fact that advisory assistance through craft committees to each vocationally-funded teacher is considered essential to insure an effective instructional program.

Response. There is no intent to diminish the importance of craft committees. In fact, by making reference in the regulation to "representatives from several craft committees, . . ." the regulation assumes that craft commitees are in existence and will be continued. No change is made in the regulation.

Sec. 104.111(d) General local advisory council.

Comment. A commenter suggested that paragraph (d) of Sec. 104.111 be eliminated since it appears to be in conflict with paragraph (a) wherein eligible recipients are required to establish local advisory councils. It is contended that this paragraph, by suggesting that existing craft committees "may join together" to form an advisory council, takes away from the eligible recipient the responsibility for determining the make-up and method of establishing its council.

Response. The regulation is considered to be merely suggestive of a method of establishing the mandated local advisory council where craft committees or school councils already exist. It is intended to be supplementary to paragraph (a) rather than in conflict with it. No change is made in the regulation.

Sec. 104.112 Public meeting.

Comment. A commenter suggested the addition of a requirement for the local advisory council to hold not less than one public meeting each year at which time the public is given an opportunity to express views concerning the programs being offered by the local educational agency and the postsecondary educational agency.

Response. While the recommendation has merit, it is not appropriate to assign additional duties to the local advisory council when there is no authority for funding. No change is made in the regulation.

Sec. 104.112(b) Local advisory council duties.

Comment. Commenters suggested that mandating local advisory councils to "assist" the eligible recipient in developing its application goes beyond Congressional intent and would exert an undue hardship on local educational agencies. Commenters also suggested that local advisory councils be required to take an active role in the evaluation of local programs.

Response. The first recommendation is accepted. Since the Act in Section 106(a)(4)(A) uses the word "consultatnion," the regulation is rewritten to state "consult with" in place of "assist".

With respect to the issue of whether local councils are to conduct evaluations, section 105(g)(1) provides that the local council advise the eligible recipient on the degree to which the courses being offered by the eligible recipient meet current job needs in the area. Although this activity may be viewed as a minor component of program evaluation, it should not be considered the equivalent of evaluation. Furthermore, since the Act does not provide any funding for the local councils, assigning the costly function of evaluation to the local council does not seem appropriate. However, it is expected that local councils will make extensive use of secondary data sources and any relevant evaluations that are made by other agencies. No change is made in the regulation.

NATIONAL OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

Sec. 104.121 Establishment of the National Occupational Information Coordinating Committee (NOICC).

Comment. A commenter recommended that a section be added, prior to the statement on the State Occupational Information Committee (SOICC), on the establishment of NOICC.

Response. The recommendation is accepted. Although the regulation does not include rules governing NOICC and SOICC, or other rules governing internal Federal organization, SOICC is described, and for consistency, NOICC is also described. A new Sec. 104.121 on NOICC has been added.

507

STATE OCCUPATIONAL INFORMATION COORDINATING COMMITTEE

Sec. 104.121 Fiscal agent for State Occupational Information Coordinating Committee.

Comment. Several commenters recommended that the regulation identify the fiscal agent for the State Occupational Information Coordinating Committee (SOICC). Some of the commenters suggested that the State board for vocational education should be the fiscal agent. One commenter suggested that the Governor should appoint the agent.

Response. The regulation, as written, does not state who the fiscal agent shall be. NOICC, when making funds available to SOICCs, may require the establishment or naming of a fiscal agent. No change is made in the regulation.

Sec. 104.121 State Advisory Council involvement with State Occupational Information Coordinating Committee.

Comment. A commenter, noting that a representative of the SACVE is not named in section 161(b)(2) of the Act as a member of the SOICC, recommended that the regulation encourage SACVE involvement in the development of the State's occupational information data system which SOICC will develop and SACVE will use.

Response. The Act (section 161(b)(2)) and the regulation (Sec. 104.121(b)), set forth the required membership of SOICC. SOICC officially will be made up of representatives of only the four agencies named. Additional involvement with individuals and agencies may take place. No change is made in the regulation.

Sec. 104.121(c) Representatives on State Occupational Information Coordinating Committee.

Comment. A commenter suggested that the Governor, rather than the respective agency, should appoint the agency's representatives on SOICC. Another commenter suggested that staff represent the State Manpower Services Council rather than a member of the Council. Another recommended that the chief executive officer be the representative. Others suggested that the Governor should appoint additional members such as representatives of the CETA prime sponsor, guidance and counseling personnel, and career education personnel.

Response. Section 161(b)(2) of the Act states that SOICC shall be composed of a representative of each of four designated State agencies; Sec. 104.121(b) carefully follows the Act. In paragraph (c) it is stated that the "representatives shall be selected by the respective State board, agency, or council." The Commissioner believes this is the proper interpretation of the word "representative," i.e., a person chosen by the group he or she represents. The Commissioner also believes that the representatives of the four designated groups should make up the entire voting membership of SOICC. The State might, however, appoint other observers or non-voting members. Therefore, no change is made in the regulation.

GENERAL APPLICATION

Sec. 104.141(c) General application amendment.

Comment. A commenter questioned the provision of Sec. 104.141(c) that amendments to the general application be made only if and when "provisions of section 106 of the Act are changed or expire." For example, it was suggested that if a State changes its fiscal control and accounting procedures under assurance (7), this should be reflected by amending the general application.

Response. The assurances are comprehensive in coverage and obligate the State to adhere to the provisions of the general application in the future. Hence any change in procedures by a State would also be subject to compliance with the assurance on file, and no amendment to the general application is necessary. At such time, however, that a change in procedures violates the assurances of the general application, the State should notify the Commissioner accordingly. No change is made in the regulation.

Sec. 104.141(e) Procedures to carry out assurances.

Comment. A commenter stated that the procedures to be included in the five-year State plan for assurances 4, 5, 9, and 10 are not mandated in the Act, and that the requirement is inconsistent and arbitrary since procedures are not required for other assurances. The commenter suggested that the requirement be deleted.

Response. Section 109 requires determination by the Commissioner that adequate procedures exist "to insure that the assurances of the general application" will be carried out. Accordingly, it was determined that assurances 4, 5, 9 and 10 require a description of procedures in order for the Commissioner to approve a plan as being in compliance with the law. No change is made in the regulation.

Sec. 104.141(f)(4)(A) Consultation with Prime Sponsor.

Comment. A commenter recommended revision of Sec. 104.141(f)(4)(A) to include a representative of prime sponsors in those areas where there is a prime sponsor.

Response. Section 104.141(f)(4)(A) provides that the annual application be developed in consultation "with representatives of the educational and training resources available in the area." While prime sponsors are not specifically named, they are certainly recognized as a training resource and should be consulted. No change is made in the regulation.

Sec. 104.141(f)(5) Consistency with the Handicapped Act.

Comment. A commenter suggested the addition of "(c) have the State vocational education plan be fully consistent with the State plan under the Education for All Handicapped Children Act of 1975 and the Federal regulations under that Act."

Response. Section 104.141(f)(10) restates the Act and requires that funds used for programs for the handicapped be consistent with the State plan under the Education for All Handicapped Children Act, which includes the Education for All Handicapped Children Act and the regulations under that Act. Therefore, the suggested phrase is a duplication. Also, a new regulation, Sec. 104.5 has been added which cross-references the requirements in Part B of the Education of the Handicapped Act. Each State education agency should read the relevant regulatory provisions in 45 CFR Part 121a since those regulations provide the specific rules which govern the expenditure of Federal vocational education funds for handicapped children within the State.

Sec. 104.141(g) (Renumbered Sec. 104.141(f)(11)) Assurance of cooperation with NCES.

Comment. Several commenters suggested that the assurance in Sec. 104.141(g) be deleted since there is an inconsistency with the assurance in Sec. 104.141(f)(3) which requires supplying information to the Commissioner. It was contended that the Administrator of the National Center for Education Statistics (NCES) should get any information needed from the Commissioner. One commenter indicated that this assurance is a duplication and, in fact, may cause great confusion in terms of the report that is collected. Two of the commenters suggested the regulation was more stringent than the Act in using "shall assure" rather than the Act language "shall cooperate."

Response. Section 161(a) places responsibility for operating the national vocational education data reporting and accounting system with the Administrator of NCES, after jointly developing with the Commissioner the information elements and uniform definitions. Accordingly, the Commissioner believes it is essential to require an assurance that the State will cooperate with NCES in supplying the data jointly agreed to be collected under the system. No change is made in the regulation.

Sec. 104.141(h) (Renumbered Sec. 104.141(f)(12)) Indian participation.

Comment. Several commenters questioned the inclusion of the assurance in Sec. 104.141(h) since this is not contained in the law and suggested it be deleted. Other commenters proposed revised language for clarification that the State board does not allocate funds directly to Indian tribal organizations.

Response. Because of the potential for excluding Indians from the regular vocational programs, the recommendation for revision is accepted and the assurance in Sec. 104.141(f)(12) will now read:

> "The State board shall also assure that students served by Indian tribal organizations applying for or receiving funds under the Commissioner's discretionary programs, under the authority of section 103(a)(1)(B) of the Act, shall be afforded the opportunity to participate in vocational education programs administered by the State."

Development of Five-Year State Plan

Sec. 104.161 Development of five-year State plan

Comment. A commenter recommended that consideration be given to more appropriate planning and management procedures. The opinion was expressed that the planning process suggested is completely outdated, and that learner-oriented goals for vocational education should be used instead of goals based on employment needs. Further, if the legislation stressed what outcomes are desirable, States could use their own discretion as to how to achieve these outcomes.

The same commenter recommended that every effort be made to secure additional funding for planning and evaluation purposes and also make provision to compensate the representatives involved in the planning group.

Response. The language of the regulation concerning the planning process follows closely the Act. The State may, of course, employ planning procedures beyond those specified so long as the State plan requirements are met. The matter of changing the planning procedures and obtaining additional funding must be resolved through the legislative process. No change is made in the regulation.

Sec. 104.161 Time for development of a model plan.

Comment. Several commenters indicated that the period of time for development of plans is too short. One commenter suggested that the five-year State plan be revised by July 1, 1978, on a one time basis, since lack of experience and the short deadline for the initial plan will make it difficult for States to prepare a model plan by July 1, 1977.

Response. The Commissioner has no authority to waive the requirement of a complete five-year State plan by July 1, 1977. While States may not be able to develop an exemplary plan initially, the minimum requirement must be met. It is anticipated that States may wish to make amendments to improve the plan during the first year. In addition, the updating procedures in the annual program plan provide a mechanism for change and improvement of the five-year State plan. No change is made in the regulation.

Sec. 104.162 Local Educational Agency (LEA) input to State plan.

Comment. A commenter suggested that, while use of a representative group for planning is a good procedure, input and data from local educational agencies should be used as one of the key bases for formulating the State plan.

Response. While not specifically so outlined, Sections 107 and 108 of the Act rely heavily on input and data from eligible recipients in formulating both the five-year State plan and the annual program plan. The plans in fact constitute an aggregation of the State's total effort in vocational education, and the State must rely on the eligible recipients for its data. No change is made in the regulation.

Sec. 104.162 Appointing authority for selecting representatives.

Comment. Commenters objected to the requirement that the appointing authority under State law designate the representatives for Sec. 104. 162(e), a local school board; Sec. 104.162(f), vocational education teachers; and Sec. 104.162(g), local school administrators. These objections were based on the commenters' interpretation that these appointments might be political appointments by the Governor. These commenters expressed a preference for a requirement that each of the agencies appoint its own representative.

Response. The language of the Act reads: "as determined by State law." This language was subject to interpretation and was construed to mean the appropriate appointing authority in the State. Accordingly, the language "as designated by the appropriate appointing authority" was added to Sec. 104.162(e) through (g) to assign the responsibility for appointing these three representatives to the individual or State agency (i.e., the Governor or the State board) having authority to make appointments under State law. No change is made in the regulation.

Sec. 104.162 Representation on planning group.

Comment. A number of commenters suggested additional representatives and rationale for their inclusion in the development of the five-year State plan. The list included: four-year institutions of higher education, State educational agency responsible for education programs for the handicapped, State agency on aging, State agency administering the vocational rehabilitation program, and State Commission on the Status of Women.

Response. The Act is specific relative to membership on the planning group. It is inappropriate for the regulation to require additional representation on the planning group beyond the representatives of the ten groups specified in Section 107(a)(1) of the Act. States may involve the above groups and other groups it wishes to include in the planning process; however, only those ten groups designated by the Act constitute the decision-making group. Other groups are encouraged to provide input either directly to the planning group or through the public hearing process. No change is made in the regulation.

Sec. 104.162 Number of representatives on the planning group.

Comment. Two commenters raised the question of whether it would be appropriate for a State to have participants other than the ten representatives specified in section 107(a)(1) of the Act involved in the decision-making process regarding provisions of the State plan.

Response. While representatives of other groups may participate in the planning process, only one designated representative from each of the ten groups specified in section 107(a)(1) of the Act must be involved in the approval of the provisions of the five-year State plan or the annual plan. No change is made in the regulation.

Comment. A commenter asked if it is possible for the State board to design the membership of the planning group in such a way that the State educational agency's personnel constitute a majority of the voting membership. This commenter also wanted to know whether the State board may appoint several persons for each category or if it is limited to only one representative for each.

Response. Although there is no requirement that each representative to the planning group have a vote, the responsibility for decision-making regarding approval of the provisions of the State plans is limited to one designated representative for each of the ten categories set forth in section 107(a)(1) of the Act. One person may represent more than one of the ten categories if the agency he or she represents has responsibility in more than one of the designated areas. No change is made in the regulation.

Sec. 104.162(f) Representatives of vocational teachers.

Comment. A commenter recommended that "including guidance specialist" be added after "vocational education teacher" in Sec. 104.162(f). Another commenter recommended that the regulation preclude supportive staff being included in the vocational teacher category.

Response. While certain guidance personnel may be considered vocational education teachers, the regulation does not go beyond the Act in requiring the inclusion of such personnel. The Commissioner believes the State law will determine which supportive staff, if any, are eligible. No change is made in the regulation.

Sec. 104.164(b) State plan content relative to rejected recommendations.

Comment. Concerning the inclusion of rejected recommendations in the State plan, a commenter suggested that the regulation should require only a summary of the recommendations rejected and the reasons for rejection rather than the original correspondence and any primary data.

Response. Section 104.164(b) requires only a listing of the rejected recommendations, the individual, agency, or council making the recommendation and the reason for rejection. These items in fact constitute a summary and should not result in a voluminous data requirement. No change is made in the regulation.

Sec. 104.164(b)(1) State board adoption of State plan.

Comment. One commenter recommended that the language in this paragraph be changed to read, "Any recommendation which is rejected by the State board indicating its source," rather than "and its source."

Response. The recommendation is accepted. This change in language will clarify the requirement that the State board specify the particular agency making the recommendation.

Sec. 104.165 Public hearings.

Comment. Several commenters objected to the phrase "Prior to adoption" in Sec. 104.165(a)(1) because it seems to compromise significantly the entire purpose of public hearings on the plan. In their view, the regulation permits a State to conceive, develop, and draft the plan without any significant input from the public. Their further contention is that the plan, once drafted, would not likely be changed. It is suggested that the phrase be changed to read: "Before the plan is written."

Response. The recommendation is accepted in part. The opportune time to hold public hearing is during the period of the plan's development. Accordingly, the regulation is changed to require the hearings "during the development, prior to adoption." If public hearings were held prior to the preparation of an initial draft, it would be difficult for the public to provide any meaningful direction since there would be no framework to initiate public discussion and reaction. Public input can be most important after there is a draft of the plan; however, the State may hold public hearings before there is a first draft or at any stage during the development of the plan when input may be useful.

Sec. 104.165(a)(3) Public hearings by region.

Comment. Commenters requested a definition of "all regions of the State." A few commenters suggested that several definitions be developed so that the State may choose from among them. Definitions suggested include: 1) commonly recognized geographic divisions, 2) quadrants, and 3) areas feeding vocational-technical schools.

Response. Since most States have recognized regional divisions, it would be preferable to leave to the State how to define its regions and how best to serve the populace in the respective regions with regard to holding public hearings. No change is made in the regulations.

Sec. 104.165(c) Public views included in State plan.

Comment. A commenter suggested that, because of the volume of paperwork involved in including all views expressed at the public hearings in the State plan, only a summary of those views be included along with an explanation of how the State board plans to consider those views.

Response. Provisions of Secs. 104.165(c) and 104.171(d) are intended to require inclusion of a summary of the views expressed at the public hearing and written comments submitted rather than letters, statements, and other primary data. Also to be included are the plans to implement those views accepted and the reasons for rejecting those views not included as part of the plan. No change is made in the regulations.

Sec. 104.165(c)(3) Public hearings.

Comment. A Commenter recommended that the phrase "accepted for inclusion" be substituted for the term "included" in line 2 of Sec. 104.165(c)(3).

Response. The recommendation is accepted. The revision will provide greater clarity to the State board's responsibility of setting forth the reason for rejecting any view submitted. The regulation is changed to read: "The reasons for rejecting any view which is not accepted for inclusion in the five-year State plan."

Sec. 104.171 Certification of plans.

Comment. A commenter recommended that this regulation include a paragraph which states: "The approval of an application under this part does not relieve an applicant agency of the responsibility to carry out its project or projects in accordance with the general application, the statute, and applicable regulations." The commenter felt this paragraph was necessary because the State board might consider compliance with certification requirements tantamount to approval by the Commissioner and write its plans accordingly.

Response. Section 104.171 requires a number of certifications regarding the State plan but does not serve as a guide for preparing the plan. Specific requirements for the content of the five-year State plan are set forth in Secs. 104.181 through 188, and these detailed requirements must be adequately described before the Commissioner will approve a plan. No change is made in the regulation.

Sec. 104.171 Number of certifications required.

Comment. A few commenters suggested that many more certifications are required by the regulation than are mandated by the Act. A further comment was that the signature of each representative on the planning group required in Sec. 104.171(b)(2) goes beyond the law and could be embarrassing to some of the signers.

Response. The inclusion of additional certifications in Sec. 104.171 is intended to clarify statutory requirements necessary for compliance. By signing the certification required in Sec. 104.171(b)(2), each representative on the planning group merely certifies that he or she had the opportunity to take an active part in formulating the plan. No change is made in the regulation.

Sec. 104.181 Guidelines.

Comment. Several commenters requested that the Office of Education reconsider the issue of promulgating separate guidelines for State plans. The view was expressed that, in fact, the proposed regulations are not precise, particularly with regard to State plans and State administration. They fear that plans will be weak and will not comply with the law. Concern related especially to the need to have State plan sections dealing with elimination of sex bias and sex stereotyping evaluated by persons with special knowledge of those issues.

Response. Public response to the Notice of Intent was divided on the issue of the need for additional guidelines. The Commissioner concluded that it was preferable not to issue separate guidelines, but rather to issue regulations which specify precisely what is required by the Act. With respect to the statutory requirements, the States will have considerable flexibility in determining how to meet the requirements of the Act and the regulations in the development of the State plan. Regarding the review of the plan, particularly in the area of sex bias and sex stereotyping, that review is one of the functions of the full-time personnel to eliminate sex bias listed under Sec. 104.75, and Sec. 104.171(g) requires that this personnel certify that they have had an opportunity to review the plan. No change is made in the regulation.

Sec. 104.182 Procedures to assure compliance.

Comment. A commenter felt that the regulations have an inordinate number of very specific requirements which would, in effect, reduce the State's options. As an example, the commenter cited Sec. 104.182 and suggested that this regulation be deleted.

Response. The language of the regulations follows closely the language of the Act. The procedures to assure compliance contained in Sec. 104.182 are deemed necessary by the Commissioner as a minimum to comply with section 109(a)(1) of the Act. No change is made in the regulations.

Sec. 104.182 Additional procedures.

Comment. A commenter suggested that the State Commission on the Status of Women in each State be designated as the agency to review the compliance procedures and to make a public statement as to the degree of progress relative to the elimination of sex role stereotyping.

Response. Although the State Commission on the Status of Women is encouraged to study the progress being made within a State to eliminate sex bias, there is no legal basis for requiring that Commission to monitor compliance procedures in the State. The personnel working to eliminate sex bias, under Sec. 104.72, must review State plans and State programs, particularly for elimination of sex bias and sex stereotyping. The Commission may work with this personnel in accomplishing the functions under Sec. 104.75. Also, the Commission may provide input annually to the State board through the public hearing process. No change is made in the regulation.

Sec. 104.182(f) Consistency with Handicapped Act.

Comment. Two commenters recommended that the reference in this section to "child" be changed to "student" so that it includes not only children but adults as well.

Response. Section 106(a)(10) requires that the use of funds for the handicapped under section 110(a) of the Act be consistent with section 613 of the Education of the Handicapped Act. Section 613 requires an individualized educational program for handicapped children in certain age ranges and does not apply to any person over 21 years of age. Accordingly, to be completely consistent with the Handicapped Act, and to make clear that the applicability is to children, not adults, it is appropriate to refer to "child" rather than "student." No change is made in the regulation.

Sec. 104.182(f) Additional citations.

Comment. A commenter suggested that the applicability of Section 504 of the Rehabilitation Act of 1973 be specified. Another commenter suggested that "and the Education for All Handicapped Children Act of 1975" be added to the last sentence of Sec. 104.182(f).

Response. The correct citation is the Education of the Handicapped Act, which was amended by the Education for All Handicapped Children Act of 1975. With respect to the applicability of Section 504 of the Rehabilitation Act of 1973, the Department promulgated final regulations on May 4, 1977, at 42 F.R. 22676. This regulation, which applies to all recipients of Federal assistance from HEW, including State Departments of Education and local educational agencies receiving vocational education funds, is intended to ensure that their federally assisted programs and activities are operated without discrimination on the basis of handicap.

Sec. 104.183 Assessment of employment opportunities.

Comment. A commenter requested that the assessment of current and future needs for workers specify workers "of all ages."

Response. While there is some rationale for specifying the need for workers by age, it does not seem appropriate to go beyond the Act in mandating these data. Further, it is doubtful whether the data are readily available. No change is made in the regulation.

Sec. 104.184 Limitation to four specified elements.

Comment. A commenter suggested that Sec. 104.184 limits unduly the flexibility of the plan and recommended that the words "at least" be added after "of" in the first paragraph. The regulation would then read: "This description shall be in terms of at least the following four elements . . . ."

Response. The State may include in the plan any information it desires beyond that specified in the regulation as long as mandated requirements are met. Therefore, the State may describe its goals in terms of additional elements beyond the four elements specified. No change is made in the regulation.

Sec. 104.184(c) Allocation of funds by institution.

Comment. A commenter recommended that the regulation be changed to read "various types of institutions" instead of "various institutions." Other commenters felt that reporting program allocations by school district would result in too much detail.

Response. The first recommendation is accepted. The added language will clarify the intent of the regulation. In response to the second comment, only the annual program plan includes the proposed distribution of funds listed by eligible recipient and is mandated by section 108(b) of the Act. The five-year State plan includes allocation of funds by various types of institutions.

Sec. 104.184(c) and (d) *Inclusion of CETA as an institution*.

Comment. A commenter suggested including CETA in "among the various institutions of the State."

Response. The provision for coordination with CETA is set forth in Sec. 104.188. Furthermore, CETA is not an institution, and the Act provides no authority for including it with the "various institutions of the State." No change is made in the regulations.

Sec. 104.185(a) *Meaning of "as precisely as possible*. "

Comment. A commenter asked what the phrase "as precisely as possible" means and asked if each State is to make its own interpretaiton. Another commenter suggested the deletion of the words "as possible" from the phrase in order to clarify the meaning.

Response. The recommendation to delete "as possible" from the phrase is accepted. Section 104.185(a) and 104.186(a) and (c) will read: "set forth precisely." In light of this modification, the term does not appear to need further interpretation.

Sec. 104.186(c) *Special needs of older people*.

Comment. A commenter suggested that Sec. 104.186(c) specify that the State plan must set forth funding to meet the special needs of older people, including persons over 65 years of age.

Response. The definitions of the handicapped and the disadvantaged do not identify specifically "older persons." The definitions include persons of all ages having special needs which cannot be met in the regular vocational education program without special assistance. While there is nothing to preclude the use of these funds for older persons, provided they meet the specific requirements, there is no statutory basis for including them as a separate category. No change is made in the regulation.

Sec. 104.186(d) *Matching set-aside funds*.

Comment. A commenter recommended that paragraph (d) of Sec. 104.186 be deleted, since neither Section 107 nor Section 110 of the Act requires State and local matching funds for this purpose to be included in the five-year State plan. It was suggested that documentation regarding the matching requirements be included in the accountability report.

Response. While the matching of funds for the national priority programs is not specifically required in Section 107 of the Act, nor in the accountability report, it is essential to include this information in order to provide a complete plan of uses of all Federal, State, and local funds. It should be noted that the annual program plan and accountability report constitute an updating and tracking of the five-year State plan. No change is made in the regulation.

Sec. 104.187 Eradicating sex discrimination.

Comment. Several commenters observed that the mandate to simplify regulations has been carried to the extreme and recommended that this regulation spell out in detail how vocational opportunities, particularly for women, will be expanded. One of the commenters stated that the State plan should include (1) an assessment of the current status of vocational education with respect to equality of access to and equality of use of vocational education programs by both sexes, and (2) goals and timetables for achieving the changes the State intends to make. Another commenter recommended that States establish an incentive system in which priority is given to LEA applications that indicate both strategies and the commitment to overcome sex bias and sex stereotyping. Commenters also charged that public comments on the Notice of Intent issue of incentives were ignored and believe that incentives are necessary. Another commenter suggested that the reference to "both men and women" is not compatible with Sec. 104.75(d).

Response. The regulation outlines the requirements of the Act but purposely allows the State ample flexibility in meeting these requirements. It is anticipated that the content of the five-year State plan will be improved, particularly in the area of elimination of sex bias and sex discrimination, by updating through the annual program plan as a result of the activities of the personnel under Sec. 104.75. Regarding incentives, the State is required by the Act to provide incentives for eligible recipients but has flexibility in developing a system of priorities for these incentives. The reference to "both men and women" is taken directly from the Act. No change is made in the regulation.

Sec. 104.187 Eradicating sex discrimination.

Comment. A commenter suggested that the term "eradicate" is a strong mandate for something which vocational education may have little control over and should be changed to a less strongly worded intent.

Response. The term "eradicate" as used in relation to sex discrimination is from the legislative history and appears to be synonymous with the term "overcome" used in the Act. No change is made in the regulation.

Sec. 104.187(a) Quota for equal access.

Comment. A commenter recommended that the words "but not necessarily quotas" be added in the sentence following "to ensure equal access."

Response. It is not appropriate for the regulations to require quotas for enrollments in vocational education programs. The States are required to set forth in detail their policies and procedures "to ensure equal access." Although some States may apply a system of quotas as part of these procedures, it is not mandated by the Act or regulations. No change is made in the regulation.

Sec. 104.187(a) Time for planning.

Comment. A commenter objected to including the requirements of Sec. 104.187(a) in the five-year State plan due on July 1, 1977, since funds are not yet available for the persons who will do the work.

Response. The Commissioner is not authorized to waive this requirement for the initial year of the legislation. Although it is probable that, when in place, the full-time personnel to eliminate sex bias will work on this section of the plan, there is no requirement in the Act regarding who will develop this section of the plan. States have been encouraged to develop the best possible State plan in the limited time available and according to the requirements of the Act. The five-year State plan may be improved through the annual program plan updating or by amendment during the year. No change is made in the regulation.

Sec. 104.187(a)(2)(ii) Sex stereotyping.

Comment. A commenter suggested that Sec. 104.187(a)(2)(ii) be changed to read: "Develop model programs to reduce sex stereotyping in training for all occupations," rather than "to reduce sex stereotyping in all occupations."

Response. The recommendation is accepted. While vocational education programs may not directly influence the reduction of sex stereotyping in all occupations, developing model programs which prepare persons of both sexes for occupations may have a positive impact on reducing sex stereotyping in occupations. Accordingly, inserting "in training for and placement in all occupations" will assure that the program proposed by the eligible recipient will focus on the reduction of sex stereotyping.

Sec. 104.188 Coordination with CETA.

Comment. Several commenters expressed concern about the implementation of coordination between vocational education and CETA. One commenter suggested that additional agreements may be needed at the national level. Another commenter suggested that the required "description of the mechanismestablished for coordination" may be reduced to mere observence of form. The recommendation was that more concrete links, such as mutual signature of plans, should be required.

Response. Section 104.188 requires the five-year State plan to describe the mechanism established for coordinating vocational education programs with manpower training programs. While only this description of the working relationship is required in the five-year State plan, the annual program plan in Sec. 104.222(e) requires reporting of the results of the coordination annually in order to assure consistency from year-to-year. In addition, the statutorily created National Occupational Information Coordinating Committee will provide for coordination between vocational education and CETA at the national level. At the State level, a representative of the State Manpower Services Council is required to be a member of the planning group for the State plan, of the State Advisory Council, and of the State occupational information coordinating committee. Since the regulation repeats the language of the Act, the States are free to include in the plan those concrete links, such as mutual signatures, which they consider desirable. No change is made in the regulation.

Development of Annual Program Plan and Accountability Report

Sec. 104.203 Due date of accountability report.

Comment. A commenter felt that too much time is allowed between the end of the fiscal year and the due date of the accountability report for that fiscal year. The commenter felt that current program information could be provided in less than the nine months the proposed regulation allows.

Response. Some of the data included in the accountability report will be reported earlier in the vocational education data system to the National Center for Education Statistics for use in preparing the annual report to Congress and other purposes. Thus, certain data will be available sooner than the July 1 deadline. Section 108(b) of the Act, however, requires submission of the accountability report with the annual program plan on the July 1 preceding the beginning of the fiscal year for which the plan will be effective. This accountability report will list the accomplishments achieved during the fiscal year preceding the submission of the plan and report. No change is made in the regulation.

Sec. 104.221 Annual program plan for 1978.

Comment. A commenter recommended that reference to Secs. 104.183 and 104.184 be included in Sec. 104.221. The commenter also felt that the requirement to include in the State plan the proposed distribution of funds among eligible recipients is an unreasonable burden and suggested that this requirement be deleted.

Response. The first recommendation is accepted. The reference to Secs. 104.183 and 104.184 was inadvertently omitted from the NPRM. Section 104.221 is rewritten to include a reference in the second line to Secs. 104.183 and 104.184.

In response to the second suggestion, the regulation follows the language of section 108(b)(1)(B)(ii) of the Act which requires the State plan to show the distribution of funds among eligible recipients. Therefore, this requirement cannot be deleted.

Sec. 104.222 Five-year State plan update.

Comment. Two commenters requested clarification regarding the yearly update of the five-year State plan. It was suggested that the five-year plan would stand as submitted with the annual program plan reflecting changes anticipated or projected which could affect the outcomes of the five-year plan.

Response. The five-year State plan will stand as it is submitted. The annual program plan will update any obsolete or inaccurate information in the five-year State plan relating to employment needs and goals for meeting these needs. The annual program plan will also include a more detailed description of how the funds projected in the five-year State plan will be used and any changes in funding proposed, along with the reasons for those changes. No change is made in the regulation.

Sec. 104.261 Review of plans by full-time personnel to eliminate sex bias.

Comment. A few commenters suggested that the full-time personnel to eliminate sex bias certify that they have made comments and recommendations on the State plan in addition to certifying that they have been afforded an opportunity to review the plan. One commenter felt that it should be stated that the certification did not necessarily constitute an endorsement of the plan. Another commenter stated that the full-time personnel will not be employed until October 1, 1977, and therefore, cannot review the 1978 plan.

Response. In accordance with section 109(a)(3)(B), the certification in Sec. 104.261(d) provides evidence to the Commissioner that the opportunity to review the plan was afforded the full-time personnel. This certification does not preclude inclusion of any comments the full-time personnel wish to make. Indeed, one of the functions of personnel under Sec. 104.75 is to make information readily available to the State board and the Commissioner. Comments on the State plan may be submitted with the certification or at any other convenient time. By certifying that an opportunity to review the plan was afforded, the full-time personnel are not necessarily endorsing the content of the plan. It is recognized that all States may not have the full-time personnel employed until October 1, 1977; nevertheless, it is the responsibility of the State to assure that the plan is in compliance with the Act. No change is made in the regulation.

Secs. 104.261 and 104.262 Criteria for approval of plans.

Comment. A commenter asked if criteria will be developed to assist the Commissioner in determining that the State has set forth adequate procedures to carry out the general application assurances and the provisions of the plan.

Response. The requirements of Secs. 104.182 through 104.188 and Secs. 104.221 through 104.241 are detailed enough to provide adequate criteria on the basis of which the Commissioner can determine whether the State is in compliance with the Act. No change is made in the regulation.

Sec. 104.262(f) Content of accountability report.

Comment. A commenter recommended that the accountability report include course enrollment by race and by sex. It was contended that the report would be inadequate if it reports race and sex data without cross-tabulating them.

Response. To reduce duplication of reporting, the accountability report is not required to include program enrollment data by race or sex. These types of data will be supplied in the vocational education data system developed under section 161 of the Act. The data, therefore, are available to the State and may be included in the accountability report if desired. No change is made in the regulation.

Sec. 104.271 Disapproval of plan.

Comment. A commenter requested clarification of Sec. 104.271(b) providing that the Commissioner will not disapprove a State plan solely on the basis of the distribution of State and local expenditures. The commenter asked which sections of the Act are covered by this provision.

Response. Since there is no legislative history to indicate otherwise, it is assumed that Sec. 104.271(b) applies to all State and local expenditures for vocational education. Therefore, no change is made in the regulation.

Hearings Before the Commissioner on Agency or Council Challenges to the Five-Year State Plan or Annual Program Plan

Sec. 104.281 Cost of appeal to the Commissioner.

Comment. A commenter suggested that the cost of an appeal to the Commissioner should be born by the agency bringing the appeal, particularly the cost of travel of the agency's representative.

Response. The cost principles governing the vocational education State-administered program are contained in Appendix B to 45 CFR Parts 100-100d. In general, these principles provide that a cost of the grant program may be reimbursed with Federal funds if the cost is necessary and reasonable for the proper and efficient administration of the program, unless specifically provided otherwise by Federal law and regulation or State or local law.

With respect to the legal expenses incurred during a section 107 appeal between two State agencies to the Commissioner, item 16 in Appendix B (45 CFR Parts 100-100d) is controlling. In accordance with this provision, if the legal services for the appeal are furnished by the State's Attorney General or staff, the costs would be unallowable because these attorneys would be discharging their general responsibilities. If one of the State agencies, however, retains private counsel because of a conflict of interest situation arising due to the State Attorney General representing two State agencies in an adversarial capacity, the legal expenses are allowable as a bona fide State administrative expense.

The travel costs of the agency representative involved in the appeal proceeding are also allowable in accordance with the principles contained in item 28 of Appendix B (45 CFR Parts 100-100d).

Since these principles are contained in the General Education Provisions Regulations, which are directly applicable to the Vocational Education Act, no change is made in the regulation.

Sec. 104.283(a) Hearing officer.

Comment. A commenter suggested there should be more than one hearing officer on a panel to hear an appeal to the Commissioner from agencies and council on State plans, as two or more hearing officers could share the responsibilities.

Response. Appeals on State plans should be heard promptly so that the plan may become effective as soon as possible. Although experience has indicated that is is difficult to obtain the services of hearing officers at short notice because of their prior commitments, it should be possible to obtain one experienced hearing officer in the prescribed time. However, if more than one hearing officer were to be used, three would be needed in order to avoid the possibility of a one-to-one tie vote. No change is made in the regulation.

Section 104.286 Criteria for Commissioner's decision on appeal.

Comment. A commenter suggested that the proposed regulations "completely miss the point" in not setting out objective criteria so that interested parties will know in advance by what standards an appeal to the Commissioner will be judged, and so that the criteria can be uniformly applied to all States engaged in appeals to the Commissioner.

Response. The Act (section 107 as to the five-year State plan, section 108 as to the annual program plan) does not require, or authorize, the Commissioner to set criteria for the Commissioner's decision. The Act says that the Commissioner shall afford an opportunity for a hearing and "shall determine whether the State board's decision is supported by substantial evidence, as shown in the State plan, and will best carry out the purposes of the Act." Substantial evidence is a legal term which is used in relation to the standard for judging evidence in administrative hearings and on appeals to the courts. The regulation (Sec. 104.286(c)) uses the legal term and gives it the meaning given by the Supreme Court in the case of Consolidated Edison Co. vs. National Labor Relations Board at "305 U.S. 197, 229 (1938)." This definition of "substantial evidence" has been cited and followed in numerous administrative hearings and court cases since it was defined by the Supreme Court in the 1938 opinion. The legislative history in relation to the hearing (House Report No. 94-1085; Senate Report No. 94-882, p. 76; Conference Report No. 94-1701, p. 221 makes no reference to separate criteria.

Since it cannot be anticipated what part of the State plan may be the subject of the appeal, it would be very difficult, if not impossible, to set criteria, as recommended by the commenter, in relation to every possible appeal for the source of the evidence, the purposes of the Act, or for determining what the Commissioner believes will best carry out the purposes of the Act. No change is made in the regulation.

Sec. 104.287 Determinations on appeal.

Comment. The same commenter objected to the requirements in Sec. 104.287(a)(1)-(4) as being "a farce."

Response. These requirements are based on language in section 107(a)(1) of the Act and repeated in Sec. 104.287(a)(1). The Act and the regulation first require the hearing officer to determine whether the procedures of that section (section 107(a)(1)) have been followed. Then Sec. 104.287(a)(2) requires a finding that the State board's plan is legal. Paragraph (a)(3) repeats the "substantial evidence" rule of section 107(a)(1), and paragraph (a)(4) repeats the standard that the hearing examiner determine that the State board's decision (rather than the appealing agency's recommendations) "best carry out the purposes of the Act." As to purposes, section 101 of the Act entitled "Declaration of Purpose" states the purpose of the Act, and the legislative history should also be reviewed to determine the purposes of the Act. It is the opinion of the Commissioner that any attempt to restate the purposes of the Act as criteria for any appeal to the Commissioner would in effect be limiting and would be substituting the Commissioner's view of the purposes for that expressed by the Congress. No change is made in the regulation.

Section 104.288(c) Commissioner's decision on appeal of the State plan.

Comment. A commenter suggested that if the Commissioner disapproves a State plan, the disapproval must be "based on a review of the entire plan."

Response. The Commissioner (through the hearing officer) will review the recommendations about the State plan made by the appealing agency or council and the State board's reasons for rejecting the recommendations. Depending on the nature of the recommendations, this may not require a review of the entire State plan. The language in Sec. 104.288(c) is based on language on page 216 of the Conference Report which says that, if the Commissioner does not approve the part of the plan in contention, the Commissioner does not rewrite the plan, but disapproves of it "in its entirety" and returns it to the State board for revision. No change is made in the regulation.

Sec. 104.289 Appeal of the Commissioner's action to the Court of Appeals.

Comment. With respect to the section 107(a) appeal, a commenter pointed out that Sec 104.289 of the regulation states that a "State board, agency, or council" may appeal the final action of the Commissioner to the Court of Appeals, whereas section 107(a) of the Act states only that any "agency or State board" may appeal to the Court of Appeals.

Response. The regulation is amended to use the exact language of the Act. The right to appeal to the courts must depend on the language of the Act, not upon different language in the regulation. The House Report (H. Rept. No. 94-1085, p. 36) states: "After the Commissioner makes this determination, any dissatisfied agency or State board (but not the State advisory council on vocational education or the State Manpower Services Council) may appeal the Commissioner's decision to the Federal circuit court of appeals."

Fiscal Requirements

Sec. 104.301 Zero-based budgeting.

Comment. A commenter, after pointing out that zero-based budgeting forces programs to analyze periodically their goals and objectives, to evaluate results regularly, and to spotlight duplication of effort, recommended that the regulation require zero-based budgeting by both Federal and State programs.

Response. In keeping with the general practice that the regulations do not regulate internal Federal matters, a statement that the Office of Education shall use zero-based budgeting is not set forth in the regulation. As to the States, a requirement in the regulation that the States adopt zero-based funding would interfere unduly in the States' own administrative matters. Therefore, no change is made in the regulation.

Federal Share

Sec 104.301(d) Matching in-kind.

Comment. A commenter asked whether the prohibition against using in-kind contributions to meet the matching and maintenance of effort requirements applies to both State and local levels.

Response. Section 104.301(d) provides that only actual expenditures of State and local funds shall be accepted as part of the State's matching and maintenance of effort requirements. This means that the prohibition against the use of in-kind contributions applies to both State and local levels. No change is made in the regulation.

Sec. 104.302 Distribution of funds for men and women.

Comment. A commenter suggested that the distribution of Federal funds should be controlled so that the availability of funds to men and women is equal.

Response. The Commissioner is prohibited by section 421A(c)(2)(B) of the General Education Provisions Act from imposing a funding distribution method different from that specified in the law authorizing the appropriation. Since the Act contains no authority for distributing funds equally among men and women, the Commissioner is not authorized to require it by regulation. No change is made in the regulation.

Sec. 104.302(a) Matching requirements.

Comment. A commenter stated that the 50 percent matching provision in Sec. 104.302(a) is in error because some program sections allow 90 percent.

Response. Section 104.302(a) contains the general statutory matching requirement in section 111(a) that the Commissioner will pay to each State an amount not to exceed 50 percent of the cost of carrying out its annual program plan. The exceptions to this general requirement are enumerated in other regulatory sections. Since the fiscal regulations are interdependent and must be read together, it is unnecessary to list all the exceptions to the general 50 percent requirement in one section of the regulation. No change is made in the regulation.

Sec. 104.303 Matching for national priority programs.

Comment. Many commenters recommended that the 50 percent matching requirements for programs for the handicapped and disadvantaged as set forth in Sec. 104.303 be reconsidered. These commenters have stated that it is inequitable for the State and local school districts to pay 50 percent of the cost of these programs when they are already supporting vocational education at such a high percentage. To expect State and local programs to adhere to these matching requirements when the proportion of Federal funding is so small is unrealistic.

Response. Section 110 of the Act provides that Federal funds shall be used to pay up to 50 percent of the excess cost of programs, services and activities for handicapped and disadvantaged persons. Section 104.303 of the regulation is based directly on this statutory provision. Section 421A(c)(2)(B) of the General Education Provisions Act (the Cranston Amendment) prohibits any funds to be apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law. Accordingly, no change is made in the regulation.

Sec. 104.303(c) and Sec. 104.314 Postsecondary and adult programs.

Comment. Several commenters have pointed out that the word "and" is omitted between paragraphs (1) and (2) of Sec. 104.303(c) and between paragraphs (a) and (b) of Sec. 104.314 and recommend that it be added.

Response. This recommendation is accepted. The final regulation has added the word "and" between paragraphs (1) and (2) of subsection 104.303 and between paragraphs (a) and (b) of Sec. 104.314. Accordingly, in Sec. 104.303(c) the Commissioner will pay an amount not to exceed 50 percent of the cost of both postsecondary and adult programs. In Sec. 104.314, the State shall expend 15 percent of the section 102(a) allotment for both postsecondary and adult programs.

Sec. 104.303 Mainstreaming requirements.

Comment. A commenter suggested a new paragraph (d) be added to Sec. 104.303 to read "Each State shall use, to the maximum extent possible, the funds required to be used for the purposes specified in subsections (a) and (b) to assist individuals described in those subsections to participate in regular vocational education programs."

Response. The mainstreaming requirement for handicapped persons is contained in Sec. 104.312. The mainstreaming requirement for disadvantaged persons and persons of limited English-speaking ability is set forth in Sec. 104.313(b). Since the inclusion of these provisions into Sec. 104.303 would result in a duplication, no change is made in the regulation.

Sec. 104.305(a)(3) Administrative costs.

Comment. A commenter requested the deletion of the phrase "excluding State administration and ancillary services" in subparagraph (3) of Sec. 104.305(a). The commenter pointed out that the Act has no such limitation.

Response. The comment has been accepted. Section 140(b)(1) of the Act provides that the State shall use Federal funds allocated for the Special Programs for the Disadvantaged to pay the full cost of vocational education for disadvantaged persons. Since State administration and ancillary services may be characterized as part of the full cost of the programs, expenditures for the administration of the program and ancillary services directly related to the program may be attributed to the section 102(b) allotment.

Minimum Percentages

Sec. 104.312 Minumum percentage for the handicapped.

Comment. A commenter suggested that because Part B of the Education of the Handicapped Act, as amended by the Education for All Handicapped Children Act of 1975, Pub. L. 94-142, mandates that each individual handicapped person be served in the "least restrictive environment," the regulation should require the States to use section 110(a) funds to the maximum extent possible to assist handicapped persons to participate in vocational education programs provided in the "least restrictive environment."

Response. Section 612(5) of Pub. L. 94-142 requires the State to establish procedures to assure that special classes or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Since funds used for the purposes of section 110(a) of the Vocational Education Act must be consistent with the State plan submitted pursuant to section 613(a) of the Education for All Handicapped Children Act, the statutory requirement on least restrictive environments is binding on section 110(a) of the Vocational Education Act. Furthermore, Sec. 104.182(f) of this regulation requires the vocational education programs for handicapped children to be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the handicapped legislation. Therefore, no change is made in the regulation.

Sec. 104.313 Minimum percentage for the disadvantaged.

Comment. Many commenters expressed concern over the inconsistency in Sec. 104.313(a) and the overview of the regulations in the Notice of Proposed Rulemaking. Section 104.313(a) provides that the State shall expend "at least" 20 percent of the section 102(a) allotment for the disadvantaged. The overview of the regulations at 42 F.R. 18542 states "up to 20 percent."

Response. The statement contained in the overview concerning the minimum percentage for the disadvantaged is incorrect. The text should read "at least 20 percent to pay up to 50 percent of the costs of programs for the disadvantaged..." Since the language in Sec. 104.313(a) is correct, no change is made in the regulation.

Sec. 104.313 Minimum percentage for the disadvantaged.

Comment. A commenter expressed a view that the proposed rules, which allow the local educational agencies to charge the cost of vocational education programs for the disadvantaged, would result in supplanting of funds. According to this commenter, a strong possibility exists whereby the schools in economically disadvantaged areas will take students who succeed in regular programs, identify them as disadvantaged, and charge the set-aside for complete teacher salaries. In order to avoid supplanting, the commenter suggested that an individualized plan for each disadvantaged student be developed which would indicate that supplemental assistance is essential to enable that student to succeed in the regular program.

Response. The term "disadvantaged" is defined in Appendix A. In accord with this definition, a disadvantaged person must require special services and assistance in order to succeed in vocational education programs. Students who can succeed in the regular vocational education program are not eligible for funding under the minumum percentage for the disadvantaged.

Furthermore, the dollar for dollar matching provision required by section 110(b) of the Act for programs for the disadvantaged would seem to preclude any possibility of supplanting of funds. The statutory "no-supplant" provision in Sec. 106(a)(6) is designed to assure that the aggregate of State and local funds available for a specific purpose, such as the disadvantaged set-aside, is not reduced because of the receipt of Federal funds under the Act. Therefore, as long as the combined State and local funds match the Federal funds earmarked for the purposes of section 110(b), it is unlikely that a violation of the "no-supplant" requirement would occur.

The suggestion for requiring an individualized plan for the disadvantaged, as required for the handicapped, may be found desirable by some States but it is not mandated by the Act. Since this procedure is not required by the Act, it is not appropriate to be included in the regulation. Thus, no change is made in the regulation.

Sec. 104.313(b) Minimum percentage for the disadvantaged.

Comment. A commenter stated that because of the history of minorities and the disadvantaged in vocational education, it is critical for the regulation governing the national priority program for the disadvantaged to offer disadvantaged students a genuine opportunity and not the traditional "dumping ground." In order to accomplish this objective, the commenter suggested incorporating into the regulation reporting requirements on criteria for selecting students, the kinds of programs available, needs assessments, evaluation tools, and enrollment data.

Response. The suggestions offered by this commenter are already an integral part of the regulation. The criteria are set forth in Appendix A; the regulations contained in Sec. 104.183 through Sec. 104.188 govern the various requirements pertaining to kinds of programs, needs assessments, and enrollment data; and Sec. 104.401 through Sec. 104.405 set forth the program evaluation requirements. Since the commenter's recommendation is incorporated into the regulation, no change is made.

Maintenance of Effort

Sec. 104.323 Reductions in expenditures.

Comment. A commenter questioned the basis in Sec. 104.323 and Sec. 104.324 for permitting reductions in expenditures for vocational education. The commenter contends that any reduction would be a violation of section 111(b) of the Act.

Response. The term "fiscal effort" as used in section 111(b) is not defined in the Act or in the legislative history. For the purpose of this regulation, therefore, the term relates to tax effort and takes into account the relationship between tax rate and tax base. If the tax base declines but the tax rate remains constant, fiscal effort is considered to be maintained even though the tax yield declines proportionately. If on the other hand, section 111(b) was written in terms of absolute spending levels, rather than fiscal effort, then the regulation would not permit any flexibility or deviation from the base year.

Since in the Act the funding requirement is stated in terms of maintenance of fiscal effort, a tolerance of five percent or less, as set forth in Sec. 104.323, can be justified on the grounds that the State's effort can be said to be sustained although there was a minor decrease in actual spending levels. An allowance of any more than five percent would risk transgressing statutory intent.

Similarly the unusual circumstance rule in Sec. 104.324 is justified because an event which is out of the control of the State does not reflect a diminished fiscal effort. An event warranting such an exception must be unusual in the sense that the grantee clearly could not have anticipated it or compensated for it.

Accordingly, no change is made in the regulation.

STATE EVALUATION

Sec. 104.402 Evaluation requirements.

Comment. Several commenters were concerned by what they perceived as the excessive burden of performing all of the kinds of evaluation listed in Sec. 104.402(a), (b), and (c). Some recommended that subsections (a) and (b) be deleted for that reason. Other commenters wanted additional criteria such as "job mobility" and "student satisfaction." Several urged that the States be allowed to choose whether or not to use the suggested criteria. Most of these commenters wanted the State board to be free to determine and use the criteria for program and project evaluation which it considers to be most appropriate.

Response. It should be noted that while the Act requires evaluation during the five-year period of the effectiveness of each program or project, the numbered examples in paragraphs (a), (b), and (c) are only suggestive and the lists are not exhaustive. Therefore, with respect to Sec. 104.402, the States already have the freedom of action described and desired by these commenters. The extent of the burden of evaluation will be determined largely by the State board. No change is made in the regulation.

Sec. 104.402 Use of sampling for evaluation.

Comment. Several commenters urged that the States be allowed to use sampling techniques in evaluating the effectiveness of their programs and projects of vocational education.

Response. The regulation does not preclude use of reasonable sampling procedures for the purposes of Sec. 104.402. Therefore, the regulation has not been modified.

Sec. 104.402 Evaluation of State and local programs.

Comment. A commenter objected to the required inclusion of State- and locally-supported programs and projects in the evaluation, on the grounds that the Act does not contain this requirement.

Response. Paragraph (c) of Sec. 104.301 states that "...every program or activity supported in whole or in part by State or local funds which are used to match Federal funds must meet the same conditions and requirements as those supported by Federal funds." Therefore, State-and locally-supported programs and projects cannot be exempted from the requirement. Thus, no change is made in the regulation.

Sec. 104.402 Employer satisfaction.

Comment. One commenter urged that the regulation permit and encourage the States to secure data on employer satisfaction and student performance by any means considered appropriate by the State, including surveys conducted by local educational agencies.

Response. Except for the data on program completers and leavers required by Sec. 104.404, the States may perform the evaluations required by Sec. 104.402 by any appropriate procedures. Therefore, the regulation has not been amended in this regard.

Sec. 104.402 Financial and legislative limitations.

Comment. One commenter urged the inclusion of evaluative criteria related to the financial limitations and other limitations set by the State's legislature.

Response. Since the lists of numbered criteria in Sec. 104.402(a), (b), (c), and (d) are only suggestive and not exhaustive, the States are already free to use additional criteria in their evaluation of program and project effectiveness. No change is made in the regulation.

Sec. 104.402 Qualitative versus quantitative.

Comment. A commenter finds confusing the requirement that program effectiveness and other essentially qualitative factors should be evaluated in quantitative terms. The recommendation is that the regulation be amended to read "...evaluate in quantitative and/or qualitative terms as appropriate...."

Response. The intent of the regulation is that the report of the evaluations be expressed in objective terms that facilitate verification and make possible the aggregation of data within a State and across States, rather than in subjective, impressionistic terms. For example, instead of describing services to women students in qualitative terms of "excellent" and "cooperative" attitudes and efforts of the staff, the regulation means to encourage reporting the facts as the number of women who enrolled in and completed each course traditionally reserved for men, the comparative numbers of men and women in the courses, and the number of each sex who found (or were placed in) employment in the field of training. The same kind of objective reporting would apply to all programs and projects supported under the Act. The recommended change is therefore not accepted because it would seem to encourage less objective and less useful kinds of reporting. No change is made in the regulation.

Sec. 104.402 Services to special populations.

Comment. A commenter found Sec. 104.402(d) "particularly inept and confusing" and recommended that services to women, members of minority groups, handicapped persons, and disadvantaged persons be measured by the same criteria used for measuring services to other students.

Response. The criticism is well taken. The intent of the regulation was that services to the named "special populations" should be measured by the same criteria as are used with all other students, and that in addition the State's evaluation would report on any other services provided for those special groups. The proposed regulatory language is not clear, and Sec. 104.402(d) has been amended to read "The results of additional services as measured by the suggested criteria under paragraphs (a), (b), and (c) of this section, that the State provides under the Act to these special populations:"

Comment. A commenter recommended that paragraph (d) of Sec. 104.402 be amended to mandate evaluation of the effectiveness of services to the special populations named there instead of making that part of the evaluation optional.

Response. The recommendation is accepted because the law not only requires evaluation of the effectiveness of all programs, projects and activities assisted under the Act, but also gives particular emphasis to those special populations. As amended, paragraph (d) becomes mandatory. In keeping with this rationale, a fifth special population category "persons of limited English-speaking ability" is added to paragraph (d).

Sec. 104.402 Services to the handicapped.

Comment. A commenter recommended that for each handicapped student, the State be required to include in its evaluation information about the instructional environment of the student, identification of the handicapping condition, and the specific occupational program in which the student is enrolled.

Response. The Act provides no basis for requiring these data, and there is no provision in other legislation, e.g., the Education of the Handicapped Act, as amended by the Education for all Handicapped Children Act of 1975, for reporting on services to handicapped students. Therefore, no change is made in the regulation.

Sec. 104.402 Fluctuations of the economy.

Comment. A commenter wanted the State's evaluation of the extent of placement of vocational education students in jobs to take into account changing economic conditions which affect the job market.

Response. Although the intent of such an amendment is meritorious, the recommendation is not accepted, because it would increase without statutory justification the already heavy burden borne by the State boards. The State board is, of course, free to take changing economic conditions into consideration in making the evaluation if it chooses to do so. No change is made in the regulation.

Sec. 104.404 Follow-up of all students.

Comment. One commenter interpreted Sec. 104.404 to mean that follow-up data should be secured for only those "completers" and "leavers" who find employment, and urged that the follow-up survey both those employed and those unemployed.

Response. No modification of the regulation is required, since Sec. 104.404(b)(1) will show whether or not the completer or the leaver found employment and whether the employment was or was not related to the vocational training.

Sec. 104.404 Definition of program leaver.

Comment. Two commenters recommended deletion of Sec. 104.404(c)(2)(ii), "all other leavers," on the grounds that the inclusion of that part of the definition would require follow-up of students, for example, who enroll in a single vocational education course and leave two weeks later. This would impose an unreasonable burden if such a leaver must be included in the follow-up survey.

Response. The Commissioner is aware of the problem posed by students whose enrollment is of such limited duration that they should not be counted in any survey of program leavers. However, instead of setting by regulation a maximum duration of enrollments that are not to be counted, the Commissioner prefers that such guidance be furnished as part of the instruction for submission of required reports and data. No change is made in the regulation.

Comment. A commenter recommended changing the definition of "program leaver" to say that the leaver has nevertheless "acquired sufficient entry-level job skills to work in the field for which he or she was trained...."

Response. It is the view of the Commissioner that the recommended change would eliminate from consideration in the evaluation and reporting those persons who do not acquire entry-level job skills either because they have not learned satisfactorily or have not been taught satisfactorily. It is believed that failure to include these persons in the report would violate the intent of the Congress. Therefore, no change is made in the regulation.

Comment. A commenter suggested that the definition of "program leaver" should be made parallel to the definition of "program completer" by adding in Sec. 104.404(c)(2) that program leaver means a student who has been enrolled in and has attended a program of vocational education "which purports to teach entry level job skills."

Response. This suggestion has been accepted. It was intended that the definitions of "program completer" and "program leaver" be parallel. It was also intended to include the phrase "which purports to teach entry level job skills" in both definitions. The regulation has been amended accordingly.

Sec. 104.404 Instructions by National Center for Education Statistics.

Comment. Two commenters asked whether the NCES instructions and standards referred to in Sec. 104.404(d) are mandatory or whether the State may choose to use a different reporting system.

Response. Use of the NCES instructions and standards is mandatory. The Act (Sec. 161(a)(3)(B)) emphasizes and mandates reporting on program "completers" and "leavers." Without a uniform data reporting system it would not be possible to aggregate and report the data across States (i.e., nation-wide). No change is made in the regulation.

Sec. 104.404 Exclusion of homemaking job skills.

Comment. Two commenters wanted the reference in Sec. 104.404(a) to "entry-level job skills" to be expanded thus: "...which purports to teach entry-level job skills, not to include the occupation of homemaking," on the grounds that it is unreasonable to try to evaluate the adequacy of training for homemaking.

Response. "Entry-level job skills" is interpreted as referring solely to paid employment, which eliminates from consideration homemaking by either spouse or parent. Homemaking by a paid housekeeper, nursemaid, or other such paid employee would be treated in the same way as any other gainful employment. No change is made in the regulation.

Sec. 104.404 Scrutiny of teaching materials.

Comment. A commenter urged the Office of Education to improve the effectiveness of program evaluation by examining vocational education courses and teaching materials to determine their "pertinency" and "currency," especially for the future needs of the nation.

Response. It is the view of the Commissioner that the effect of the recommendation would be to involve the Federal government in matters which are the prerogative of the States and local schools. No basis was found in the Act to support the recommendation. Therefore, no change is made in the regulation.

SUBPART 2 -- BASIC GRANTS

Sec. 104.502(b) Distribution of basic grant funds.

Comment. Many commenters objected to the mandatory reservation of funds under the basic grants in Sec. 104.502(b) for special programs and placement services tailored to meet the need of the special populations described in Sec. 104.621. Some of these commenters were concerned that if funds are reserved for displaced homemakers and other special groups, the remaining funds may be insufficient for vocational education programs described in Sec. 104.511. Other commenters suggested that funding for programs for these special populations be attributed to another section of the law.

Response. Section 107(b)(4)(B) of the Act requires that the State set forth in its five-year plan a program to assess and meet the needs of persons described in section 120(b)(1)(2). This program will provide for special courses for these persons in learning how to seek employment and placement services for the graduates. Therefore, even though the Act attempted to consolidate numerous programs under section 120 to provide greater flexibility and discretion to the State, funding for programs for displaced homemakers as well as for full-time personnel to perform the functions in Sec. 104.75 is mandatory. Funding for the balance of activities listed in section 120 is permissive. Neither the Act nor the regulation, however, requires a minimum funding level for programs for these special populations. The State must earmark an amount of funds it considers adequate to support the courses and services which are described in its five-year plan to meet the needs of these special populations. Accordingly, no change is made in the regulation.

Sec. 104.502(c) Support for guidance under the basic grant.

Comment. A commenter recommended that guidance and counseling be added to the list of purposes for which funds under section 120 of the Act may be used. The rationale for the comment is that guidance and counseling services are essential to the successful placement of individuals in careers.

Response. The Commissioner agrees that guidance and counseling are essential for the successful placement of individuals. However, the Act provides funding for this activity in subpart 3 - Program Improvement and Support Services. Section 134 requires the State to expend at least 20 percent of the subpart 3 allotment for guidance and counseling services. Thus, no change is made in the regulation.

Sec. 104.502(c) Consolidation of programs.

Comment. A few commenters perceived the consolidation of the expansive list of programs, services, and activities in Sec. 104.502(c) as a "danger point" because if States can determine their own priorities for funding, low priority may be given to support services for women. These commenters suggested that with respect to programs which may contribute to eliminating sex stereotyping, the regulation should mandate funding.

Response. One of the major purposes of this new Act is the consolidation of numerous programs and activities into a single basic grant. This consolidation allows the State to determine its own priorities for funding. Consequently, there is no legal justification to undo by regulation what Congress specifically directed by statute. Thus, no change is made in the regulation.

Sec. 104.511(b) Initial equipment.

Comment. Many commenters expressed some confusion with respect to the inclusion of "instructional equipment" and the exclusion of "initial equipment" in the definition of vocational education programs in Sec. 104.511(b). Part of the confusion seems to stem from the fact that the definition of "school facilities" in section 195 includes "initial equipment." Some of these commenters requested that the regulation clearly distinguish these terms.

Response. The language contained in Sec. 104.511(b) is based directly on the statutory definition of vocational education in section 195. This definition provides in part that the "term 'vocational education' does not mean the construction, acquisition or initial equipment of buildings." "Initial equipment" includes building fixtures, utilities and furnishings or simply the materials which must be placed in a facility to accommodate the type of instruction or other vocational education purpose for which the facility is designed. Although the definition of "vocational education" does not allow for the purchase of initial equipment, States may use funds under the authority of section 120(b)(1)(E) (construction of area vocational education school facilities) for initial equipment. It should also be noted that the definition of vocational education allows for the acquisition of instructional equipment. No change is made in the regulation.

Sec. 104.512(b)(3) Apprenticeship related instructional programs.

Comment. A commenter expressed the view that, since apprenticeship-related instructional programs are directly tied to the process of job placement, more than a simple reference to them in Sec. 104.512 should be given. This commenter suggested that a more detailed regulation governing the operation of these programs be adopted.

Response. The comment is accepted. In view of the importance of related instruction to apprentices who are employed to learn trade skills, a new regulation, Sec. 104.515, has been added. The language of this provision is adopted from the regulation promulgated in 1975 by the Commissioner at 40 FR 57760 (December 11, 1975) on this same subject matter. This regulation requires the State to include certain assurances in the five-year plan if apprenticeship-related instructional programs are offered.

These assurances will (1) insure that the vocational training is supplemental to on-the-job training experience of the apprentice; (2) set minimum age standards; (3) require an apprentice training agreement; (4) outline the required characteristics of the skilled trade; (5) specify the classifications of registered and non-registered apprentices; and (6) require conformity with Department of Labor regulations on apprenticeship programs.

Sec. 104.513 Student Organizations.

Comment. A great many commenters submitted their views both in writing to the Regulations Task Force and at the public meetings on the subject of vocational education student organizations. Although the vast majority of these commenters expressed their satisfaction with the inclusion of a regulation authorizing the expenditure of funds for activities of vocational education youth organizations which are an integral part of the vocational education programs, many commenters objected to certain aspects of the regulation.

Many commenters objected to paragraph (c) which lists six activities which cannot be considered an integral part of vocational instruction. Some believe that it is entirely unnecessary to regulate on nonreimbursable activities because it is generally assumed that if an activity is not explicitly set forth, it cannot be funded.

A number of commenters expressed disapproval with some of the items listed as nonreimbursable in paragraph (c). Some commenters felt strongly that attendance at conventions, student organization newsletters, and recognition of outstanding performance are all vital elements of the student organization instructional and leadership program. Since these activities are designed to prepare youth to become responsible members of society, these items should be moved into reimbursable activities in paragraph (b). Many members of student organizations either testified at the public meetings or wrote letters explaining that the element in paragraph (c) represented an important educational function and should be supported financially. One individual testified that students value their awards more than anything.

The one item in paragraph (c) which received the most comment was the prohibition against using funds for lodging, feeding, conveying, or furnishing transportation to conventions or other forms of assemblage. Some commenters pointed out that national and State conventions, culminating the experience of conferences held locally and regionally, provide an excellent educational forum for an exchange of ideas and are an integral part of the instruction. Limiting funds for this purpose will have a negative impact on the future of vocational education.

A few commenters objected to the use of the term "assemblage" in paragraph (c)(1). They felt this term would preclude the furnishing of transportation to any activity in which groups of students come together, including field or laboratory work incidental to the vocational training. Others argued that funds should be available for furnishing transportation to skill competitions which are directly related to the instructional program. Some commenters expressed the view that allowing funds to be used for transportation of students for student organization activities may lead to abuse in the use of funds.

A few commenters stated that the regulations may be fostering a discriminatory policy if the lodging and travel of statewide coordinators are reimbursable, but student costs are not. Others generally questioned whether funds may be used to pay the salaries of statewide coordinators.

One commenter suggested that if Federal funds are to be used to support the cost of instructional supplies and materials for student organizations, then a requirement should be imposed to insure that such materials are free of sex stereotyping. Another commenter recommended that States be required to match dollar-for-dollar Federal funds used for student organizations.

Many commenters recommended that the regulations be amended to insure explicitly that any activity of an organization funded with Federal dollars be available to all students in the instructional program without regard to membership in the student organization. In this connection, Congressmen Perkins and Quie in the House Committee on Education and Labor stated in a letter to the Commissioner, "We do not believe that any activity can be supported with Federal funds unless all of the students in the instructional program are eligible to participate without regard to membership in any student organization. Otherwise, we feel that the Federal government would be in the untenable position of excluding students from the benefits of a Federally-funded program solely because they do not choose to join a private organization."

A few commenters strongly objected to the use of Federal funds to support any activity of a student organization. They stated that there is no authority in the law or legislative history to support the regulation. In their view, Congress considered and rejected proposals which would have expressly permitted support for such activities.

Still others who expressed strong support for student organizations urged that the Office of Education not control by regulation that which was not deemed necessary to impose by legislation. They argue that the intent of Congress was to leave student organizations out of the law because, "The student organizations are doing fine. It may be doing them a disservice to put them in the Federal law, thus making them part of the system, subject to its structure. Any legislative support is best left to the individual States."

Response. The Office of Education recognizes the educational programs and philosophies embraced by vocational education student organizations as being an integral part of the vocational education system of training. The efforts of these student organizations to improve the quality and relevance of instruction, to develop student leadership and to enhance citizenship responsibilities have equipped and will continue to equip vocational education students with the tools necessary to enter the labor market and to assume successful roles in society. To this end, Sec. 104.513 of the regulations allows that Federal, State, and local funds available under the five-year State plan (subject to the overall matching requirements) may be used to give support to the activities of vocational education student organizations which are directly related to the vocational education instructional programs under the approved five-year State plan. It should be made clear at the outset that, since the activities of student organizations are not explicitly authorized in the Act, the activities can only benefit from the vocational education program to the degree to which the activity is directly integrated into the regular instructional program.

It has been apparent to the Office of Education that this national policy on student organizations has been interpreted differently by the States. Some States have construed the policy in earlier regulations broadly to reimburse all student organization activities. Other States have adopted a very limited view of specific activities which are reimbursable. As a result of this demonstrated ambiguity, the Commissioner has decided to provide the States with uniform guidance on reimbursable activities of student organizations. This guidance was set forth in proposed form in Sec. 104.513 of the Notice of Proposed Rulemaking.

The language of the final regulation closely resembles the proposed regulation with minor amendments to reflect some of the more compelling comments submitted. In the first place, paragraph (b) continues to list supportable activities, and paragraph (c) lists non-supportable activities. These paragraphs are not intended to be exhaustive lists, but merely a framework the State should use in distinguishing between reimbursable and non-reimbursable activities. Despite the comments to the contrary, the Commissioner believes it is essential to list non-reimbursable activities in order to avoid misinterpretation.

The specific items listed in paragraph (b) are extrapolated in large part from the statutory definition of vocational education. (All of the student organizations, of course, are subject to the Title IX provisions on sex discrimination and the section 107(b)(4)(A) requirement to eliminate sex stereotyping. Instructional materials used by the student organizations are subject to the same requirements, which are not repeated in the regulation.) Support is not limited, however, to training, field work, and acquisition of instructional supplies. Instruction-oriented activities such as special demonstration projects, lectures and exhibits initiated by vocational education personnel may also be supported. Salaries of Statewide coordinators responsible for the aforementioned activities are also reimbursable as an administrative cost. Vocational counseling in connection with vocational training for the purpose of facilitating occupational choices may be supported with funds available under section 130, not section 120.

The text of paragraph (b) has been amended under subparagraph (2). The final clause "cost of travel thereto" has been deleted because, as some commenters indicated, the generally-accepted prohibition against use of Federal funds for transportation to conventions could too easily be circumvented by permitting use of Federal funds for any type of travel of students. This does not mean that funds cannot be used for travel which is part of the instructional program. Funds may be expended on an activity such as travel of class members when such travel is necessary to carry out an otherwise allowable activity such as field work.

Although paragraph (c) lists six items which cannot be funded due to their non-instructional nature, the language in (c)(1) received the most criticism. This subparagraph provides that "an integral part of vocational instruction" does not include lodging, feeding, conveying, or furnishing transportation to conventions or other forms of assemblage. This language, which is taken directly from 31 U.S.C. 551, controls the expenditure of Federal funds and all State and local funds set forth under the plan. The word "assemblage" in this subparagraph, however, was not intended to include field work and laboratory work, but rather social, athletic, or recreational events. Accordingly, the word "social" has been inserted before the word "assemblage."

Finally, paragraph (a) lists the general conditions for funding vocational education student organizations described in the approved five-year State plan. In addition to the activity being an integral part of the instruction and supervised by vocational education personnel, another condition is made explicit in light of the comments received. The activity must be available to all students in the instructional program without regard to membership in any student organization. Students cannot be excluded from the benefits of a program receiving Federal funds because they do not choose to join the student organization.

Sec. 104.514 Vocational instruction under contract.

Comment. Many commenters expressed confusion with respect to the scope of Sec. 104.514. Some questioned whether private vocational training institutions include both private for-profit and private non-profit institutions. Others requested clarification on any special requirements pertaining to arrangements with private postsecondary vocational training institutions.

Response. Part of the confusion on the issue of private vocational training institutions was due to the omission of the contracting authority for private vocational training institutions in the Act. The Technical Amendments, however, restore this contracting authority. Accordingly, the regulation has been amended to reflect this revision to the Act. A new paragraph (c) has been added to Sec. 104.514 permitting the State or LEA to make arrangements with private vocational training institutions provided that the institution (1) can make a significant contribution to attaining the objectives of the plan and can provide substantially equivalent training at a lesser cost, or (2) can provide equipment or services not available in public instituitons.

In addition, paragraph (a) of Sec. 104.514 has been amended to clarify the fact that contracts with private vocational training institutions include both for-profit and nonprofit institutions.

Sec. 104.514 Discrimination in private education institutions.

Comment. A commenter suggested that no Federal funds should be shared with private educational institutions without an active effort to make certain that they do not discriminate.

Response. Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, Title IX of the Education Amendments of 1972, which prohibits sex discrimination, and section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of the handicapped, are applicable to all institutions receiving Federal funds, whether public or private. The State educational agency has the responsibility for assuring that these civil rights provisions are being carried out. Since these non-discriminatory provisions are already binding on private educational institutions, no change is made in the regulation.

Sec. 104.521 Work study - discrimination.

Comment. Several commenters pointed out that some of the most overt discrimination against students takes place in the employment they obtain through their schools. School officials often acquiesce to requests from employers which discriminate on the basis of sex in placement, responsibility, salary, and advancement, and the practice has continued unabated since the implementation of Title IX. These commenters also believe that it would be contrary to the purpose of the Act to prohibit sex discrimination in vocational training but to permit it to occur in employment. They suggest that the regulation should require that no student be recommended for, placed in, or receive benefits under a job which discriminates on the basis of sex and race. Employers seeking to employ students under work study programs or cooperative vocational education programs should be required to sign assurances that they will not discriminate on the basis of sex or race in hiring, placing or paying students.

Under all employment programs, school officials should be required to reject sex-specific employment requests and to make an affirmative effort to inform employers that the school is prohibited by law from maintaining cooperative arrangements with any employer which discriminates. Furthermore, these commenters contend that officials should bear some responsibility for monitoring employers' compliance. This could be accomplished by maintaining a simple data file indicating the company by which each student is employed; the race and sex of the student and the level in the vocational education program which she or he had completed when employed; a summary of the student's previous work experience, and a job description and the starting salary at which the student was employed. Where a school finds indications of discrimination in the employment of its students, it should be required to conduct a full investigation and withdraw the cooperation of its job referral offices if businesses are engaging in discriminatory hiring practices which they refuse to make an affirmative effort to correct.

Response. The Commissioner concurs with the concern expressed in this comment that overt discrimination against students frequently occurs in the employment the students obtain through their schools. Such discrimination practices are in direct violation of Title IX of the Education Amendments of 1972 which prohibits sex discrimination under any education program or activity receiving Federal financial assistance. This requirement, which is referenced in 45 CFR 100b.262 of GEPR, is binding on the work study program, apprenticeship program, and the cooperative education program where the issue of sex discrimination in student employment is most significant. Since the prohibition against sex discrimination is already in the GEPR, it is unnecessary to repeat the provision in the separate program regulations.

A change has been made, however, in Sec. 104.75(e) of the regulation. Since the functions of the full-time personnel include the review of all vocational education programs in the State for sex bias, an explicit reference is now made to the review of work study programs, apprenticeship programs, and cooperative vocational education programs and the placement of students who have successfully completed vocational education programs.

Although these regulations do not require LEAs to maintain the type of data file on each student participating in work study or cooperative programs as suggested by these commenters, the full-time personnel designated to eliminate sex discrimination may want to consider seriously the adoption of this recommendation.

Sec. 104.521 Work study - disadvantaged participation.

Comment. Many commenters questioned whether work study funds would be a legitimate expenditure under the minimum percentage for the disadvantaged in section 110(b) of the Act.

Response. In light of the enactment of the Technical Amendments, States may compute work study funds expended for the disadvantaged as a legitimate expenditure for the minimum percentage for the disadvantaged. Section 110(b) now allows for the cost of programs, services and activities under subpart 2 to be applied against the 20 percent set-aside. Since work study is a permissible activity under subpart 2, the funding of work study for the disadvantaged is an allowable cost under section 110(b). A change has been made to Sec. 104.303 to clarify this matter.

Sec. 104.522(b) Work study - ranking of applications.

Comment. A commenter questioned whether the State must fund work study programs for all LEAs or only for some of them.

Response. Under the consolidation imposed by the Act, the State retains the discretion of determining which programs under section 120 will be funded. If work study programs are funded, then the State must give funding preference to applications submitted by LEAs serving communities having substantial numbers of youths who have dropped out of school or who are unemployed in accordance with Sec. 104.522(b). No change is made in the regulation.

Sec. 104.523(a) Work-study administrative costs.

Comment. Many commenters suggested that the last sentence of Sec. 104.523(a) requiring work study administrative costs to be supported with non-Federal funds be deleted. Some of these commenters suggested that the following sentence be substituted: "Funds shall be expended solely for payment or compensation to students employed in work study programs."

Response. In view of the fact that the Technical Amendments now authorize the use of Federal funds for local administrative costs, the provision in Sec. 104.523(a) prohibiting such use has been deleted. Nevertheless, section121(b)(1) of the Act requires that Federal funds for work study be expended solely for the payment of students employed pursuant to work-study programs. As long as all Federal funds distributed under the specific work-study application are earmarked for payment to students, LEAs may use other Federal funds for local administrative costs pursuant to the methods described in Sec. 104.307.

Sec. 104.523 Work study-eligibility.

Comment. A commenter asked whether work study programs could be administered by local educational agencies only. This commenter stated that it should be permissible for the State board to administer the program if the State board directly operates the school.

Response. Section 121(a) of the Act limits the administration of work study programs to local educational agencies. Section 104.523 of the regulation also limits the eligibility to LEAs. In order for the State board or other eligible recipients to administer work study programs, legislative relief would be necessary. Accordingly, no change is made in the regulation.

Sec. 104.523(c) Work study - 20-hour limit.

Comment. A commenter asked whether the 20-hour limit per week in the work study program conforms to Department of Labor standards. Another commenter stated that the 20-hour limit for a student 18-21 years of age may not provide enough earnings to meet the student's needs.

Response. Since section 121(a)(3) requires the Commissioner to determine a reasonable number of hours per week that a student may be employed under a work study program, it is unnecessary to conform the 20-hour limit in Sec. 104.523(c) to Department of Labor standards. With respect to the issue of the 20-hour limit in employment being too low, it is the Commissioner's position that an amount in excess of 20 hours per week would be potentially detrimental to the student's academic efforts. Furthermore, a ceiling of 20 hours should permit the limited resources available for work study to be shared among more students. Accordingly, no change is made in the regulation.

Sec. 104.531 Cooperative programs - 100 percent funding.

Comment. Many commenters questioned whether all cooperative vocational education programs may receive 100 percent Federal funding or just those cooperative programs serving students in nonprofit private schools. Some of these commenters indicated that only the cooperative vocational education program described in section 122 of the Act should include nonprofit private school students.

Response. The Vocational Education Act does not provide authority for two types of cooperative vocational education programs. Any basic grant funds used by a State for cooperative vocational education programs must meet all the statutory requirements of section 122 of the Act and Secs. 104.531 through 104.533 of this regulation. States may not legally circumvent these requirements by labeling "cooperative vocational education programs" as "vocational education programs" and funding the activity under section 120(b)(1)(A).

With respect to the issue of funding, the State may fund, with up to 100 percent Federal monies, those cooperative vocational education programs being carried out by LEAs which include the participation of students from nonprofit private schools. This does not mean that the program must be designed exclusively for students in nonprofit private schools; but rather, if the program includes such students, it may be funded up to 100 percent. In order to clarify this matter in the regulation, Sec. 104.305(a)(1) is amended to read, "Cooperative vocational education programs which include students enrolled in nonprofit private schools. . . ."

Sec. 104.531(b) Cooperative education priorities.

Comment. A few commenters perceived some difficulty in LEAs utilizing the funding priority in Sec. 104.531(b) (areas that have high rates of school dropouts or youth unemployment) because of the consolidation of cooperative vocational education programs under the grant. The issue raised is whether the LEA, having received a grant from the State, must give priority in funding cooperative education programs to areas that have high rates of school dropouts or youth unemployment.

Response. Even though the cooperative vocational education program has been consolidated under the basic grant, sectio 122(e) requires the State to give priority to funding cooperative programs to areas that have high rates of school dropouts or youth unemployment. The State must give priority to the applications of local educational agencies on the basis of the statutory criteria. The determination of the amount of funds earmarked for cooperative programs, however, is entirely within the domain of the State. If the State decides to fund cooperative programs, based on the local applications, then any Federal funds encumbered for cooperative programs must be expended by the LEA in accordance with the local application it submitted. In order to clarify the fact that the funding determination for cooperative programs is based on the local application, the language in Sec. 104.531(b) has been amended.

Sec. 104.532 Cooperative assurances.

Comment. A commenter suggested that the list of assurances in Sec. 104.532 be deleted because the Act does not require these assurances to be contained in the five-year State plan.

Response. Section 122 of the Act requires that cooperative vocational education programs conducted by LEAs include a variety of assurances enumerated in paragraphs (a) through (h). In order to ensure that the State adheres to these provisions when funding proposed cooperative programs described in the local application, the Commissioner believes it is imperative that the assurances be included in the approved five-year State plan. No change is made in the regulation.

Sec. 104.532 Cooperative programs -- reimbursement of added costs.

Comment. Many commenters questioned the meaning of the provision in Sec. 104.532(c) for reimbursement of added costs to employers for on-the-job training of students. Some of these commenters cautioned against reimbursing employers for students' mistakes on the job.

Response. This provision relating to the reimbursement of employers for the added costs has been a part of the cooperative program since 1968. The provision entitles the employer to receive the necessary reimbursement in the event the employer is faced with additional costs to his or her business because of such factors as the participation of many students or the participation of disadvantaged or handicapped students. For example, if a number of students are placed in a business establishment and the employer assigns employees to supervise those students while they are on the job, then the employer may be entitled to be reimbursed for the added cost of the time the employees supervise those students. No change is made in the regulation.

Sec. 104.532 Cooperative programs - private nonprofit schools

Comment. One commenter pointed out that the proposed regulation governing the participation of students in nonprofit private schools in cooperative vocational educational programs is taken almost verbatim from the corresponding statutory language. This commenter stated that the regulation ignores the specific concerns expressed by the House Committee on Education and Labor in H.R. 94-1085 at page 46. In this passage the Committee urged the Office of Education to take more vigorous steps to implement the statutory provisions for the funding of programs involving students enrolled in nonprofit private schools. Without further elaboration in the regulation to reflect these concerns, this commenter believes that there will not be adequate safeguards to assure that eligible students enrolled in nonprofit private schools will participate in the programs on an equitable basis.

Response. The comment is accepted. A new regulation, Sec. 104.533, is added to the section on cooperative vocational education programs to reflect the language contained in the House Report. In accordance with this regulation, the State must consult with the appropriate nonprofit private school officials at the State and local levels in order to make provision for the participation of students enrolled in nonprofit private schools. In addition, LEAs receiving funds for cooperative programs shall identify the eligible students, assess their needs, and provide them with the types of programs and services which will most effectively meet their needs. The personnel, materials and equipment necessary to provide these cooperative vocational education programs and services shall remain under the administration, direction and control of the LEA.

Sec. 104.532 Cooperative programs - on-the-job training.

Comment. Commenters expressed strong disapproval of the omission in Sec. 104.532 of two important on-the-job training requirements which were included in the regulations (Sec. 102.98) implementing the 1968 legislation. These requirements would insure that the cooperative program provide on-the-job training that:

1. "Employs and compensates student-learners in conformity with Federal, State, and local laws and regulations and in a manner not resulting in exploitation of the student-learner for private gain"; and

2. "Is conducted in accordance with written training agreements between local educational agencies and employers."
According to these commenters, the cooperative vocational programs may be converted into a job-placement type of program with less emphasis on high quality, bona fide cooperative programs. Without the structure of the training agreement, LEAs may increase the pupil-teacher ratio, increase the class size, and add responsibilities for the teacher-coordinator. Noncompensation of the student-learner may have an adverse effect on liability in case of injury to the student, and there would be no employer-employee relationship under State workmen's compensation laws.

Response. The comments are accepted and the regulation is amended to reflect the requirement for compensation and written training agreements. These requirements were inadvertently omitted from the NPRM. The Commissioner agrees with the point of view expressed by these commenters that the omission of these two requirements may have a detrimental effect on the overall quality of the cooperative vocational education program. It should be noted, however, that whereas the former regulation required the written training agreements to be submitted to the State for filing with the local application, this submission is not required by this regulation. The State shall only provide an assurance of these two requirements along with the other assurances set forth in Sec. 104.532.

Sec. 104.541 Energy education -- secondary level.

Comment. Several commenters objected to the language in Sec. 104.541 which provides that funds may be used for grants to postsecondary institutions for energy education. These commenters raised serious questions as to the exclusion of energy education programs from secondary schools. Some of these commenters stated that students who have no opportunity for postsecondary training deserve, nevertheless, as much chance as possible to get good training. Other commenters pointed out that their States already have successful energy education projects at the secondary level.

Response. The language of the regulation is based directly on section 123 of the Act which provides for grants to postsecondary institutions. Neither this statutory provision nor Sec. 104.511 of the regulation has been viewed as limiting the funding of those energy education programs which may be characterized as vocational education programs, exclusively to postsecondary institutions. In the event an LEA has incorporated an energy education program into its regular vocational education curriculum at the secondary level, the LEA may use funds it receives under its local application to support this program. It is imperative, however, that the energy education program at the secondary level be considered a vocational education program under section 120(b)(1)(A) and not under section 120(b)(1)(D) of the Act.

Sec. 104.543 Solar energy.

Comment. A few commenters objected to the fact that the regulation provides for the support of programs for solar energy but makes no mention of other energy areas such as oil shale. Other commenters stated that training limited only to installation of solar energy equipment is too narrow.

Response. Although the regulation follows the Act very closely in this new and emerging area, it was not intended to exclude vocational training in other energy areas such as oil shale, or hydroelectric power. Neither was it intended to exclude training in the operation and maintenance of solar and other energy producing equipment. As long as the training program may be characterized as vocational education under section (1)(A), Federal funds may be used to support the program. No change is made in the regulation.

Sec. 104.552 Location of vocational facilities.

Comment. One commenter stated that many area vocational schools constructed with Federal funds serve racially identifiable populations and areas, often to the detriment of central city school districts which serve predominantly non-white student populations. This commenter recommended that the regulation be amended to require the State board to act affirmatively to ensure equal educational opportunities for all students.

Response. Since the construction of area vocational schools is an authorized activity under section 120 of the Act, the sites of the schools are chosen at the discretion of the State and LEA. However, the nondiscrimination provisions in 45 CFR Part 80, which effectuate Title VI of the Civil Rights Act of 1964 are binding on the State. Section 45 CFR 80.3(b)(3) provides that in determining the site or location of a facility, a recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color or national origin. Furthermore, if the State makes Federal funds available to an eligible recipient for construction of a vocational facility, the funds must be distributed on the basis of the funding formula described in Section 106(a)(5) of the Act. Under this formula, priority must be given to eligible recipients located in economically depressed areas and areas with high rates of unemployment. Accordingly, Federal funds used for construction must be distributed to communities in economically depressed areas such as central city school districts.

With respect to the issue of equal educational opportunities for all students and admission policies, Title VI of the Civil Rights Act and Title IX of the Education Amendments of 1972 prohibit discrimination on the basis of race and sex. Since these provisions are binding on all institutions receiving Federal assistance, vocational facilities constructed with Federal monies may not adopt discriminatory admission policies. Thus, no change is made in the regulation.

Sec. 104.571 Provision for stipends.

Comment. Many commenters suggested that since Federal vocational education resources are so limited, the use of funds to pay stipends to students is highly questionable. These commenters believe that the available dollars should be spent to upgrade and maintain existing programs and provide for expansion.

Response. Although section 120 of the Act allows for the provisions of stipends, the decision to permit funds to be earmarked for stipends lies within the discretion of the individual States. Since the Act provides the State with this option, no change is made in the regulation.

Sec. 104.581 Placement services.

Comment. A commenter suggested that the language of Sec. 104.581 be revised to include guidance and counseling explicitly under the section of the basic grant which permits funding of placement services for students who have successfully completed vocational education programs.

Response. Section 120(b)(1)(H) of the Act permits the expenditure of subpart 2 funds for placement services if there is inadequate funding in other programs providing similar activities, or other services are inadequate to meet the needs of the State. Although placement services are an integral part of guidance and counseling, the Act does not allow section 120 funds to be used for all activities under the general heading of guidance and counseling. Since the regulation conforms to these statutory limitations, no change is made in the regulation.

Sec. 104.581 Placement services for completers.

Comment. A few commenters were critical of the language in Sec. 104.581 which provides placement services for students who have successfully completed the vocational education program. These commenters have urged that the placement services be made to all students who have enrolled in a vocational education program regardless of whether the program is completed or not completed.

Response. The language in Sec. 104.581 is based directly on section 120(b)(1)(H) of the Act which limits the eligibility of this activity to "students who have successfully completed vocational education programs." To expand the eligibility would contravene both the Act and the legislative history. Thus, no change is made in the regulation.

Sec. 104.591 Industrial arts -- mandatory funding.

Comment. A few commenters asked whether a State could legally refuse to make Federal funds available for industrial arts programs.

Response. Although industrial arts is an authorized activity under section 120 of the Act, the matter of funding such programs lies within the discretion of the State. There is no requirement in the Act that each specific program enumerated in section 120 be funded. No change is made in the regulation.

Sec. 104.591 Industrial arts for the disadvantaged and handicapped.

Comment. A commenter asked whether prevocational and exploratory programs of industrial arts programs designed for the handicapped and disadvantaged may be charged against the section 110 minimum percentages.

Response. Prevocational and exploratory programs in industrial arts are permissible expenditures under section 120 of the Act. Since expenditures for all programs, services and activities under section 120 may be applied against the minimum percentage requirements for the handicapped and disadvantaged in section 110, the cost of prevocational and exploratory programs in industrial arts may be charged against the section 110 minimum percentages. No change is made in the regulation.

Sec. 104.592 Industrial arts -- sex stereotyping.

Comment. Many commenters stated that industrial arts programs traditionally have discriminated against women by denying them entry into male-intensive fields. According to these commenters, female students encountering discrimination at the introductory vocational level are less likely to develop an interest later in nontraditional vocational courses and are handicapped when they try to enter vocational programs which require prerequisite skills and courses acquired in industrial arts programs. These commenters have recommended that, since participation in industrial arts programs can provide a crucial opportunity for introduction of women to the higher-paying industrial and technical occupations, the regulation should require that industrial arts programs contribute to the reduction of sex stereotyping in the overall vocational education programs.

Response. The comment is accepted. Section 120(b)(1)(I) provides for the support of industrial arts programs which will assist in meeting the purposes of the Act. One of the primary purposes set forth in the declaration of purpose, section 101, is the development of programs to overcome sex stereotyping; therefore, the references to the purpose of the Act of overcoming sex stereotyping should be made explicit in the regulation. Accordingly, Sec. 104.592 has been amended to reflect this concern.

Sec. 104.601 Support services for women.

Comment. Many commenters expressed concern with this section of the regulation because it only singles out problems related to women. Some of these commenters believe that, inasmuch as the Federal law is designed to eliminate sex bias, this regulation violates Title IX which provides that no program can discriminate against either sex. Others recommended that the regulation provide support services for men who enter programs designed to prepare persons for employment in jobs which have traditionally been limited to women.

Response. One of the major conclusions reached by Congress during its two years of hearings on the Vocational Education Act is that the inferior position which women now hold in the labor market is reinforced by the type of training programs available to and selected by them. Consequently, the legislation was drafted in a way to attempt to solve this problem. One of the key provisions on this matter incorporated into the Act was the section 120(b)(1)(J) program of support services for women. Section 104.601 of the regulations is based on this statutory provision. It should be noted, however, that support services for men (e.g., counseling, placement) are reimbursable under other sections of the Act. Thus, no change is made in the regulation.

Sec. 104.602(a) Support services for women -- counseling.

Comment. A commenter suggested the language in Sec. 104.602(a) be amended to include counseling on the ways to overcome the difficulties encountered in enrolling in nontraditional programs.

Response. The comment is accepted. Mere counseling on the problems involved in enrolling in nontraditional programs is inadequate if these problems are to be solved. Therefore, Sec. 104.602(a) has been rewritten to provide for counseling on the ways of overcoming the difficulties which may be encountered by women in these programs.

Sec. 104.602(b) Support services for women -- job development.

Comment. A commenter questioned whether this type of service was limited only to women who are already enrolled in nontraditional programs.

Response. Since the wording of this regulation may give the impression that the service is available only to women directly enrolled in nontraditional programs, the regulation has been clarified so that the service will be available also to women entering the programs or interested in the programs. This revision is necessary because part of the problem women encounter is overcoming previous socialization and barriers to entry in these programs.

Sec. 104.612(b) Standards for day care services.

Comment. Many commenters objected to the requirement in Sec. 104.612(b) that day care services be governed by applicable standards of State law. Some of these commenters pointed out that certain States presently have no such standards. Some requested that all State standards be certified, and others requested clarification and guidance on the expenditure of these funds.

Response. In order to develop a degree of uniformity in the expenditure of funds for day care services, the standards set forth in the Federal Interagency Day Care Regulations, 45 CFR Part 71, will govern the provision of day care services. Accordingly, the reference in Sec. 104.612(b) to the standards imposed by State law has been deleted.

Sec. 104.621(a) Meaning of dissolution of marriage.

Comment. A commenter asked whether the special programs for persons who had been homemakers but who now, because of dissolution of marriage, must seek employment apply only to divorced individuals.

Response. The term "dissolution of marriage" is not to be interpreted only in the strict sense of divorce. Vocational training is available to the homemaker who has experienced a separation, annulment or any other type of dissolution of marriage. No change is made in the regulation.

Sec. 104.622(a) Instructional supplies.

Comment. A commenter suggested that the language in Sec. 104.622(a) "repair of instructional supplies" be changed to "repair of instructional equipment" because supplies are not normally repaired.

Response. The comment is accepted. The Commissioner agrees that since supplies are not normally repaired, the substitution of the term equipment would be appropriate.

Sec. 104.633 Residential schools - discrimination.

Comment. A commenter requested that the standards of Title VI of the 1964 Civil Rights Act be substituted for the present language which provides that funds may not be used for schools in which students are segregated because of race. Another commenter suggested that a new paragraph (c) be added to prohibit the use of funds for schools where there are different standards for admission based on sex.

Response. With respect to the matter of race, the regulation repeats the statutory provision that no funds may be used for residential vocational schools in which students are segregated because of race. Title VI provisions, however, are also applicable to the entire program and are referenced in 45 CFR 100b.262 of the General Education Provisions Regulations (GEPR). Also applicable are regulations in 45 CFR Part 84 which effectuate section 504 of the Rehabilitaiton Act of 1973. In addition, Title IX, also referenced in GEPR, prohibits the adoption of different standards for admission on sex. Therefore, no change is made in the regulation.

SUBPART 3 -- PROGRAM IMPROVEMENT AND SUPPORTIVE SERVICES

Sec. 104.701 Authorization for program improvement and supportive services.

Comment. A commenter stated that Sec. 104.701 should read that a State shall use "up to 20 percent" for program improvement and supportive services, and that a State is not required to use the full 20 percent for these activities.

Response. The Act specifically states "20 percent" and not "up to 20 percent." This is not a matter of discretion. The State must expend 20 percent of its funds for activities under Subpart 3. Funds not obligated for Subpart 3 may be carried over under the Tydings Amendment (section 412(b) of GEPA) for one year and, if not obligated during that year, would revert to the government. No change is made in the regulation.

Sec. 104.703 Research coordinating unit (RCU).

Comment. Many commenters stated that the Act permits a State to establish a research coordinating unit, and that it is not mandatory for the State to do so. Commenters recommended that the regulation be clarified.

Response. The Act states that a State "may" (not "shall") use the funds for the establishment of a research coordinating unit. However, if a State is to use any funds for research, exemplary and innovative programs, or curriculum development, it must establish a research coordinating unit in order to do so. No change is made in the regulation.

Comment. A commenter stated that the Act stipulates that the research coordinating unit is to contract for research, exemplary and innovative programs, and curriculum development, and that the research coordinating unit may perform directly the research activities, but not the exemplary and innovative programs nor the curriculum development activities.

Response. The Technical Amendments and the legislative history of the Technical Amendments (Senate Report No. 95-142) make it clear that the RCU may perform all functions, research, exemplary and innovative programs, or curriculum development functions itself or may contract for the functions. Sections 104.705, 104.706, and 104.708 are amended accordingly.

Comment. Two commenters recommended that the term "unit to coordinate research" be substituted for "research coordinating unit."

Response. The Act consistently uses the term "research coordinating unit." However, a State could call its research coordinating unit by another title if it so desired. No change is made in the regulation.

Comment. A commenter suggested that the research coordinating unit be responsible for the vocational education personnel training activities as well as the research, exemplary and innovative programs, and curriculum development.

Response. There is no legal basis in the Act for requiring the RCU to be responsible for vocational education personnel training. A State may, if it chooses, charge the RCU with responsibility for coordination of vocational education personnel training. No change is made in the regulation.

Comment. Several commenters stated that the program improvement funds are a part of the State grant and must be governed by the State plan, and it is the responsibility of the State board, not the research coordinating unit, to develop the State plan. Commenters recommended that the regulation clarify the roles of the State board and the RCU.

Response. The RCU is not responsible for the development of the State plan or the comprehensive plan of program improvement. The development of these documents is the responsibility of the State board. Section 104.703(c) is amended to clarify the role of the RCU.

Comment. Several commenters were concerned that the regulation did not adequately control possible duplication of efforts in the State, and that abstracts of planned projects should be submitted to the National Center for Research in Vocational Education and the U.S. Office of Education.

Response. Section 104.703(e)(1) requires that two copies of approved projects be submitted to the National Center and to the Commissioner. It would be an undue burden on the States to have to submit abstracts of planned projects. No change is made in the regulation.

Sec. 104.704 Contract requirements.

Comment. A commenter recommended that "demonstrate a reasonable probability" be defined.

Response. The Act does not define the expression "demonstrate a reasonable probability." The burden is on the applicant to set forth a reasoned probability that the project will result in usable improved teaching techniques or curriculum materials. Since the expression is not defined in the regulation, the State must make the determination of "reasonable probability." No change is made in the regulation.

Comment. Two commenters recommended that the words "instructional programs" be substituted for "teaching techniques or curriculum materials."

Response. "Teaching techniques or curriculum materials" is taken directly from the Act. Substituting "instructional programs" would apparently change the intent of the Act. Thus, no change is made in the regulation.

Sec. 104.705 Research programs.

Comment. One commenter recommended that States should be permitted to use research funds to disseminate the results of projects that were not supported with vocational research funds.

Response. The recommendation is accepted. It is clear that the intent of the legislation is not to restrict the dissemination activities to the results of projects that were supported with vocational education funds. Section 104.705(5) is changed to implement this recommendation.

Comment. A commenter recommended that the following be added to Sec. 104.705(2) "and programs and projects for occupational and vocational guidance which utilizes the services of certified guidance counselors. This should include programs where training and retraining of guidance personnel can be effectively evaluated as well as programs which directly provide guidance counseling and placement services as part of the vocational education effort."

Response. The research activities listed in this regulation are taken directly from the Act. Under this present authority, the State may evaluate the effectiveness of training and retraining of guidance personnel or other personnel. No change is made in the regulation.

Sec. 104.706 Exemplary and Innovative Programs.

Comment. A commenter recommended that programs designed to facilitate the employment of older people, including people over 65 years of age be included in the list of possible uses of exemplary and innovative funds.

Response. Although older people are not separately identified as persons who would benefit from exemplary and innovative projects, they clearly are included. No change is made in the regulation.

Comment. One commenter recommended that Sec. 104.706 give special consideration to four-year postsecondary institutions as contractors for the funds for exemplary and innovative programs.

Response. Although there is no legal basis in the Act for giving special consideration to four-year postsecondary institutions as contractors, they are not excluded. No change is made in the regulation.

Sec. 104.708 Curriculum development.

Comment. Several commenters questioned why the research coordinating units must do the contracting for the curriculum development effort.

Response. Section 133(a) of the Act, as amended by the Technical Amendments, clearly states that the contracts for curriculum development are to be made by the research coordinating units. No change is made in the regulation.

Comment. A commenter recommended that the phrase "sex stereotyping" be added after "sex bias" in Sec. 104.708(c).

Response. The recommendation is accepted. It was an oversight in the proposed regulation to have left out "sex stereotyping."

Sec. 104.761 Qualifications of counselors.

Comment. A commenter recommended that the regulation associated with the administration, supervision, conduct, and design of vocational guidance and counseling programs and services set forth the qualifications of personnel to be supported by available funds. This would include setting minimum professional standards for counselors. Administrators and practitioners should be required to meet the certification standards for practicing counselors.

Response. Since the current law does not set forth specific qualifications for these personnel and the criteria will vary from State-to-State, the States have discretion to establish their own certification standards. No change is made in the regulation.

Sec. 104.761 Needed personnel for guidance and counseling.

Comment. A commenter indicated that vocational guidance and counseling are vastly needed to improve vocational education programs. However, guidance and counseling personnel cannot be expected to provide all the vocational education services as outlined in the regulation. Other personnel and funds should be available to coordinate services.

Response. It is expected that the Federal funds earmarked by the State to support vocational development and guidance under this section of the Act will supplement the State's ongoing effort to improve the guidance, counseling, placement and follow-up services offered to their students. No change is made in the regulation.

Sec. 104.763 Activities eligible for funding.

Comment. Several commenters recommended a rephrasing of the statement, "funds made available to a State under the vocational guidance and counseling program (Section 134 of the Act) shall be used to support one or more of the following ...." Various substitute language was suggested by the commenters for the phrase "to support one or more of the following...." In most instances, the commenters offered recommendations that, if put into the regulation, would assure the funding of specific activities and in some cases each of the eight activities listed in the Act.

Response. The Technical Amendments make the intent of Congress clear on this issue. The language of the Technical Amendments is "shall include one or more of the following activities. . . ." No change is made in the regulation.

Sec. 107.763 Organization of vocational guidance activities.

Comment. A substantial number of commenters expressed the opinion that while they agreed that funds allocated under Sec. 130(a) shall be used to support one or more of the eight activities listed in section 134 of the Act, they questioned the reorganization of the eight activities into five as proposed in the NPRM. The commenters preferred for reason of interpretation that the eight activities be enumerated in the regulation as they appear in the Act.

Response. The major purpose for reorganizing the eight groups of activities listed in the Act into five, with appropriate subgroups, was to simplify and make clearer the meaning of the Act. Judging from the many comments received from the public on this regulation, the purpose for regrouping was not achieved. Therefore, the recommendation of the commenters is accepted, and Sec. 104.763 is changed to conform to the language of the Act.

Sec. 104.763 *Eligibility for placement and follow-up services*.

Comment. Several commenters raised questions about the meaning of educational placement and job placement services, and which groups or individuals are eligible to receive funds for this activity under the Act.

Response. The law provides funds for educational and job placement services, including follow-up services, for high school, college, and university students. Educational and job placement services and follow-up is one of the eight vocational guidance and counseling activities included in the Act. The Technical Amendments make it clear that funds shall be used for one or more of these eight activities, and that the one or more activities funded shall be determined by the State. No change is made in the regulation.

Sec. 104.763 *Placement and follow-up services*.

Comment. A commenter recommended that the regulation specify that placement and follow-up services are concerned with the occupational programs in secondary schools, area vocational schools, community colleges, and baccalaureate or higher degree-granting institutions.

Response. The current language of Sec. 104.763(3) makes it clear that all the groups identified by the commenter are eligible for placement and follow-up services. No change is made in the regulation.

Sec. 104.764(a) *Special emphasis*.

Comment. A commenter expressed the opinion that the term "counselor" as used in this regulation could be misinterpreted or puzzling and might pose a problem regarding official counselor qualifications. This commenter recommended the deletion of the phrase "into schools as counselors. . .," and the use of the phrase "into schools as vocational career advisors for students."

Response. The language of the Act is "to bring individuals with experience in business and industry, the professions, and other occupational pursuits into schools as counselors or advisors for students." Both the Act and the regulation allow the local schools the flexibility to bring these individuals in as advisors. No change is made in the regulation.

Sec. 104.774 Other types of training.

Comment. A commenter asked whether funds available under section 130 of the Act could be used to provide training for competency-based programs, teacher certification programs, vocational degree programs, and vocational leadership development programs. This commenter recommended a regulation stipulating that locally-oriented evaluation and needs assessment must be the basis for determining the uses to be made of vocational education personnel training funds.

Response. The State, through its five-year State plan and annual program plan, has the option of providing any kind of training that it believes will improve the quality of instruction, supervision, or administration of vocational education. The State may choose to base its determinations on local evaluation and local needs assessments. The recommendation that the State's options in this matter be limited by regulation is not accepted because there is nothing in the Act on which to base such a limitation. No change is made in the regulation.

Comment. One commenter recommended that Sec. 104.774(b) be amended to read "In-service training ... to overcome sex bias and sex stereotyping in vocational education programs."

Response. The recommendation to add and sex stereotyping is accepted, because the Congress in the Act's declaration of purpose (Section 101.(3)), emphasized equal opportunity in vocational education for persons of both sexes, and because it is not reasonable to suppose that after the Congress included overcoming both sex discrimination and sex stereotyping in the declaration of purpose, it meant to exclude the latter concern in programs of vocational education personnel training.

Comment. One commenter wanted the regulation to include, specifically, training in curriculum development.

Response. The recommendation is not accepted because such training may be included under the non-exhaustive list in Sec. 104.474 at the option of the State. No change is made in the regulation.

Sec. 104.774 Handicapped or disadvantaged students.

Comment. A commenter recommended that the regulation include, as an allowable category, training to improve vocational education for handicapped and disadvantaged persons; another commenter similarly wanted to include, as a category, training to deal with "learning disabilities."

Response. Such training may already be included under the non-exhaustive list in Sec. 104.774 at the option of the State. Nevertheless, because of the emphasis in the Act on these categories, the regulation has been amended to include them specifically.

Grants to Overcome Sex Bias

Sec. 104.792 Overcome sex bias "and sex stereotyping."

Comment. One commenter requested that "sex stereotyping" be added to Sec. 104.792(a).

Response. The recommendation is accepted. Although the title of section 136 in the Act uses only the term "sex bias," the body of that section refers to "sex stereotyping and bias." It appears that "sex stereotyping" was inadvertently omitted from the regulation.

Sec. 104.793 Types of projects.

Comment. Many commenters felt that the activities listed were too limiting and examples should be deleted altogether. Many others, however, felt that the list was not comprehensive enough. Of these commenters, most wanted to add "programs to overcome sex bias" to the list.

Response. The activities listed in Sec. 104.793 are intended to be examples, and the list is not exhaustive. Section 136 of the Act, which authorizes grants to overcome sex bias and sex stereotyping, falls under Subpart 3, Program Improvement and Supportive Services; therefore, funds used under this section must go for support or improvement of vocational education programs. Insofar as programs to overcome sex bias fall into this category, they may be supported by funds under this section. No change is made in the regulation.

Sec. 104.793(e) "Assisting girls and women" in selecting careers.

Comment. Several commenters felt that Sec. 104.793(e)(2) should not be restricted to women and girls and that the regulation should read: "Assisting persons in selecting careers." The rationale they gave for requesting the change was that males, too, need assistance in selecting careers according to their interests rather than according to stereotypes. They felt that, in leaving males out, the regulation was "sexist."

Response. The recommendation is accepted to include males as well as females. Paragraph (e) is rewritten to include assistance for all persons in selecting careers since sex stereotyping is not limited to females.

SUBPART 4 -- SPECIAL PROGRAMS FOR THE DISADVANTAGED

Sec. 104.801 Girls and women as disadvantaged.

Comment. A commenter has recommended that "because girls and women traditionally have been channeled into educational tracks which have not enabled them to acquire the prerequisites to pursue training for a wide range of occupations," "girls and women" should be added as a group who require special services in order for them to succeed in vocational education programs. The same commenter recommended an additional criterion, "those who lack prerequisites as a result of previous discrimination."

Response. Since the criteria for identifying those who are academically disadvantaged already include the lack of reading, writing, or mathematical skills, and failure to perform at the necessary grade level, adding a specific category for "girls and women" as disadvantaged (even those who have the necessary skills and perform at the necessary grade level) would seem unnecessary. Therefore, this recommendation is not accepted. No change is made in the regulation.

Sec. 104.802(a) Youth unemployment and school dropouts.

Comment. A commenter suggested that although the phrase used in section 140(b)(1) of the Act is "youth unemployment and school dropouts," the word "or" should be used in the regulation as both criteria need not be met.

Response. The recommendation is accepted. In order to provide a degree of consistency in the regulations for funding those programs which require prioritizing of local applications on the basis of youth unemployment or school dropouts (the work-study program, the cooperative vocational education program, and special programs for the disadvantaged), the word "and" in Sec. 104.531(b) and Sec. 104.802(a) has been changed to "or." Funds may be used in areas of either high concentration of youth unemployment or high concentration of school dropouts.

Sec. 104.804 Academic disadvantage.

Comment. A commenter pointed out that, since academic handicaps are of such a variety, detection of academic handicaps, and symptoms of underachievement could be made earlier by a school counselor than by an instructor. The commenter recommended that qualified counseling be provided at the elementary school level and through the implementation of programs for the disadvantaged.

Response. The regulation for Subpart 4, "Special Programs for the Disadvantaged," does not state who shall apply the criteria of "disadvantaged" to a particular individual. By not prescribing who must apply the criteria, the State or the LEA has the full range of options. The student, the student's parents, the student's teacher, and the school's guidance counselor may all be involved in the decision. Individual guidance and counseling for the academically and economically disadvantaged is very important. Elsewhere in the Act (section 130) and in the regulations (Secs. 104.761-764) the importance of guidance and counseling activities is stressed; however, the regulation does not require the advice of a guidance counselor in every situation. No change is made in the regulation.

Sec. 104.804(b)(3) Performance below grade level.

Comment. Another commenter recommended deletion of "performance below grade level" in the definition of "academic disadvantage," considering the criteria of (b)(1) or (b)(2) adequate.

Response. Since the three criteria of paragraph (b) of Sec. 104.804 (that is the criteria in (b)(1), (2) and (3)) are alternatives, criteria

(3) need not be applied by those who do not believe performance below grade level to be a valid criterion. These criteria must, of course, be applied in relation to paragraphs (d)(1) and (2) in reaching a decision whether special services are necessary. Likewise, the four alternative criteria of paragraph (c) of Sec. 104.804 must be applied in relation to paragraphs (b) (1) and (2). No change is made in the regulation.

SUBPART 5 -- CONSUMER AND HOMEMAKING EDUCATION

Sec. 104.903 Occupation of consumer and homemaking.

Comment. Many commenters recommended that the regulation use the term "occupation" (singular) of consumer and homemaker even though the Act uses "occupations" (plural).

Response. The recommendation is accepted. The phrase "occupation of consumer and homemaking" has been substituted. Although the regulation follows very closely after the Act, since the persons most closely associated with administration of, or instruction in, consumer and homemaking education feel strongly that the occupation of consumer and homemaking should be referred to in the singular, the regulation is amended accordingly.

Sec. 104.903(a) Consumer and homemaking education at the elementary level.

Comment. A commenter questioned the inclusion of "elementary" after the phrase "at all educational levels" because elsewhere vocational education is only for secondary, postsecondary, and adult levels.

Response. The House Report (No. 94-1085, page 50) expressly states that the program of consumer and homemaking education was expanded to include the elementary level. Therefore, no change is made in the regulation.

Sec. 104.904 Preference to LEAs for creative approaches in eliminating sex stereotyping in consumer and homemaking programs.

Comment. A commenter stated: "The regulations should require that State plans include criteria for selection of applicants based on the degree to which the applicant places emphasis on the preparation of males and females for combining the roles of homemaker and wage-earner. Local education agencies should receive preference for funding if they develop or utilize creative approaches for achieving this objective."

Response: This recommendation goes beyond the terms of the Act. While section 150(b)(1)(B) of the Act requires the State plan "to encourage elimination of sex stereotyping in consumer and homemaking programs by promoting the development of curriculum materials ..." and to "prepare males and females who have entered or are preparing to enter the work of the home," the Act does not provide for preference in funding LEAs which show a creative approach in eliminating sex stereotyping. The Commissioner urges the States to encourage all LEAs to assure participation of both males and females in consumer and homemaking programs. The Act does not support criteria for competition among LEAs with preference in funding on the basis for some and the non-funding of others. Exemplary projects in consumer and homemaking education may, however, be funded by the State under Sec. 104.706 or by the Commissioner under Sec. 105.104(a)(2). No change is made in the regulation.

Sec. 104.904 Scheduling for consumer and homemaking courses.

Comment: A commenter stated: "To ensure greater availability of consumer and homemaking education programs to both males and females, the regulations must address the problem of scheduling. To implement the intent of the law there must be much greater flexibility in the scheduling of classes. Most secondary schools schedule consumer and homemaking courses during the same time periods as courses which traditionally have catered to boys. Both sexes are thereby prevented from participating in the other course or both courses. The regulations should require scheduling which provides authentic options for students."

Response. It would be inappropriate for the Commissioner's regulation to require a particular scheduling of classes within a school or school system. In fact, Section 432 of the General Education Provisions Act prohibits the Commissioner from exercising "any direction, supervision, or control over the . . . administration of any educational institution, school or school system. . . . " A scheduling of classes, however, which prevents persons of one sex from participating in courses which have traditionally catered to persons of the other sex, would be a violation of Title IX. No change is made in the regulation.

Sec. 104.904 Curriculum materials which address sex stereotyping.

Comment. A commenter recommended: "Regulations should state that no programs will be funded under this section unless they show evidence of using or developing curriculum materials that will address sex stereotyping and sex bias in the area they are addressing, e.g., programs for handicapped persons."

Response. Section 432 of the General Education Provisions Act, described in the previous response, also prohibits the Commissioner from exercising any direction, supervision or control over the "textbooks or other printed or published instructional materials by any education institution."

While the Act and regulation require the elimination of sex bias and sex stereotyping in curriculum materials, it would be inappropriate, and possibly illegal under section 432 of GEPA, for the Commissioner to require all schools to use textbooks or other material which specifically address sex stereotyping. On the other hand, schools must use textbooks and other material which are free from sex bias and sex stereotyping. No change is made in the regulation.

Sec. 104.904(d) Definition of "outreach."

Comment. A commenter recommended that "outreach programs" be defined.

Response. Section 150(b)(1)(D) of the Act and Sec. 104.904(d) of the regulation encourage consumer and homemaking outreach programs for "...aged, young children, school-age parents, single parents, handicapped persons," and many others. It seems evident that consumer and homemaking education programs are encouraged to "reach out" for those not normally in formal school settings. Any further definition might be limiting to the broad scope obviously intended. No change is made in the regulation.

Sec. 104.905 Consumer and homemaking -- guidance and counseling.

Comment. A commenter recommended that, since the Act makes many references to guidance and counseling activities, these activities are a permissible use of funds, that is, a permissible ancillary service, in consumer and homemaking education and recommends that "guidance and counseling" be added under Sec. 104.905.

Response. The recommendation is accepted. Guidance and counseling is recognized as an ancillary service. Funds under section 150(b)(1) of the Act for the purpose of Sec. 104.903(c)(4) may be used for guidance and counseling of students. Therefore, a new paragraph (k) has been added at the end of Sec. 104.905 to read:

"(k) guidance and counseling."

Sec. 104.906 Federal share.

Comment. A commenter recommended that paragraphs (a) and (b) of Sec. 104.906 should be reversed so that the major rule as to matching (50-50) which may apply to two-thirds of the funds is stated first, and the secondary rule (90-10 matching) which applies to (at least) one-third follows.

Response. The recommendation has been accepted. The two paragraphs are reversed and rewritten accordingly.

PART 105 -- COMMISSIONER'S DISCRETIONARY PROGRAMS OF VOCATIONAL EDUCATION

SUBPART I - PROGRAM IMPROVEMENT

Sec. 105.5 Applicability of technical review criteria.

Comment. Several commenters recommended that it should be made clear that the technical review criteria in Part 105 apply to the review of applications for grants and assistance contracts and not for procurement contracts.

Response. The recommendation is accepted. The proposed technical review criteria in the Commissioner's discretionary programs were not intended to apply to the review of proposals for procurement contracts because procurement contracts are covered by the Federal Procurement Regulations in Title 41, Code of Federal Regulations. Projects for Program Improvement under section 171 of the Act and for the Bilingual Vocational

Instructional Materials, Methods, and Techniques Program under section 188 will be supported primarily through procurement contracts. A new Sec. 105.5 is added to reference the Federal Procurement Regulations. Each Request for Proposal (RFP) will specify the criteria which will be used to select the contractor. These criteria will, of course, be consistent with the Act and the regulation. RFP's are announced in the COMMERCE BUSINESS DAILY, not the FEDERAL REGISTER.

Sec. 105.101 Elimination of sex bias.

Comment. Several commenters expressed concern that there was not sufficient emphasis on elimination of sex bias and sex stereotyping in Secs. 105.101-.11. Two commenters suggested giving more points to projects dealing with this concern.

Response. The comments are accepted. In light of the fact that one of the major purposes of the Act is the elimination of sex bias, the weight given to this criterion in Sec. 105.110(k) has been increased to eight points. In addition, the concerns of sex bias and sex stereotyping will be dealt with through the setting of priorities.

Sec. 105.101 Emphasis on contracts.

Comment. Two commenters expressed concern that the legislative intent of emphasizing contracts over grants needs to be spelled out more clearly.

Response. The regulation now conforms to the Act with regard to this matter. Section 171(a) states that program funds are to be "used primarily for contracts, and in some cases for grants." It is clear that the program is to be administered primarily through procurement contracts rather than through grants. This mode of program administration will apply to all of the activities listed in Sec.105.104. No change is made in the regulation.

Sec. 105.102 National Center for Research in Vocational Education.

Comment. Some commenters expressed concern that the regulation did not reflect the language of the Act in terms of the regional research centers. The commenters recommended that Sec. 105.102 be rewritten.

Response. The recommendation is accepted. The regulation is changed to read exactly as it is in the Act in regard to the regional research centers.

Comment. A commenter expressed concern that the section on the national center did not mention elimination of sex bias or sex stereotyping as a special concern.

Response. Section 171 of the Act, which is the section concerned with the national center, does not give special mention to sex bias and sex stereotyping. However, since a major emphasis of the Act is on the elimination of sex bias and sex stereotyping, it will directly affect the administration of programs of the center. No change is made in the regulation.

Comment. A commenter expressed concern that the national center will have an unfair preemptive position in competing for contracts.

Response. Even though the national center will develop planning information for the Commissioner, it will in no way establish the priorities for the project support program to be administered by the Commissioner. The national center will not assist the Commissioner in the development of individual Requests for Proposals (RFPs). If the national center assisted in the preparation of a particular RFP, then the national center would not be eligible to compete for the contract under the RFP. The Commissioner will secure sole source procurements only in extremely limited circumstances and situations. No change is made in the regulation.

Comment. A commenter expressed concern that the national center could preempt all of the research activities to be funded by the Commissioner and none would be done through individually funded projects.

Response. The Commissioner does not plan to administer the program in a manner that would allow the center to preempt reserach activities. Greater resources will certainly be allocated to funding individual projects than to funding the national center. No change is made in the regulation.

Comment. A commenter expressed concern that the national center would have access to confidential financial information of competitors.

Response. The national center will not have access to confidential information that is protected by the Privacy Act or that is not included under the Freedom of Information Act. Copies of unfunded proposals would not be available to the national center. Copies of funded proposals, less those items protected by the Privacy Act, would be available to the national center if needed by the national center in order to carry out its clearinghouse functions. No change is made in the regulation.

Sec. 105.104 Role of States.

Comment. A commenter expressed concern that States would have too great a role in the administration of the Commissioner's discretionary projects under this section.

Response. The Act does not require that proposals requesting support from the Commissioner under the terms of section 171 be sent through the States. The Commissioner does not plan to request that proposals be sent through the States in the administration of this program. No change is made in the regulation.

Sec. 105.105 Eligibility of individuals.

Comment. Several commenters suggested that individuals not be included as eligible applicants.

Response. Since the Act does not exclude individuals as eligible applicants, no change is made in the regulation.

Sec. 105.106 Cost-sharing.

Comment. A commenter objected to the statement in Sec. 105.106 in relation to grants or contracts for program improvement: "No cost sharing is required." The objection was based on the implication, which the short sentence carries, that cost-sharing will not be sought or accepted from any applicant. The commenter recommended that the sentence be reworded.

Response. This recommendation is accepted. While cost-sharing is not required by the Act, an applicant may indicate it intends to contribute part of the cost of a project. The heading is changed to "cost sharing," and a new sentence is added as follows: "The Commissioner may pay all or part of the cost."

Sec. 105.110 Technical review criteria.

Comment. A commenter suggested that the requirement in Sec. 105.108 -- that the grant will result in improved teaching techniques, etc. should be reflected in the technical review criteria in Sec. 105.110.

Response. Section 105.108 sets forth a requirement of eligibility for grant applications. All applications for grants will be reviewed for compliance with this requirement, and then, only if the application meets this requirement will it be evaluated in accordance with the technical review criteria in Sec. 105.110. No change is made in the regulation.

Sec. 105.110(k) Sex bias.

Comment. Several commenters recommended that points should be given in the review of applications for exemplary and innovative projects which seek to "eliminate," not "minimize" sex bias; in other words that the word "minimize" in paragraph (k) of the technical review criteria be changed to read "eliminate." Another commenter recommended that "sex stereotyping" be added to the criterion on sex bias.

Response. The recommendation is accepted. The sentence is amended to read: "The application provides appropriate plans to eliminate sex bias and sex stereotyping."

Comment. A commenter recommended that a separate criterion be established to give additional weight to applications for projects employing women and minorities in the planning and implementing of the project.

Response. The technical review criteria do not include a specific weighted criterion for proposed projects on which women or minorities will be employed. Section 105.110(h) does, however, include under "Staff Competencies and Experience" the "use of professional staff members from minorities and who are women." The Commissioner will review the applications in relation to the criteria listed in Sec. 105.110, including paragraph (h) on staffing and paragraph (k) on elimination of sex bias. Therefore, no change is made in the regulation.

Subpart 2 -- Indian Tribes

Sec. 105.202(b) Applicability of the Indian Self-Determination and Education Assistance Act.

Comment. A commenter asked who determines the extent to which implementation of the regulation concerning the sections of the Indian Self-Determination and Education Assistance Act are relevant and practicable.

Response. The Commissioner of Education in the first instance is responsible for implementing the applicable sections. In the event that questions arise which might affect Bureau of Indian Affairs (BIA) policy, the Commissioner will consult the Bureau of Indian Affairs for guidance. No change is made in the regulation.

Sec. 105.203 Definition of Indian tribe.

Comment. A commenter stated that the definition of an Indian tribe and the section on eligibility were overly restrictive, and therefore, result in an inequity for an Indian organization comprised of Indians who reside in urban areas or who are not members of federally recognized tribes. The commenter further stated that Indian organizations that are not federally recognized are eligible for assistance.

Response. Section 103(a)(1)(B)(iii) of the Act is restrictively written with regard to the parties eligible to contract with the Office of Education. By reference, a tribe or tribal organization must comply with the definition in the Indian Self-Determination and Education Assistance Act, which requires that the tribe or tribal organization be federally recognized. Moreover, to be eligible, the tribe must be eligible to contract with the Secretary of the Interior under the Indian Self-Determination Act of April 16, 1934.

To the extent that other Federal departments or agencies award grants or enter into contracts with Indian tribes or organizations which are not federally recognized, it is because the definitions of Indian tribe and the standards for eligibility vary. For example, the Indian Education Act defines the term Indian to include "any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes *bands, or groups terminated since 1940 and those recognized now or in the future, by the State in which they reside.*" Thus, given the less inclusive definition in the Act and the Self-Determination Act, the Commissioner has no authority to fund Indian organizations which are not federally recognized. No change is made in the regulation.

Sec. 105.205 *Eligible applicants.*

Comment. A commenter asked if the contract program for Indian tribes and Indian organizations would preclude Indians, specifically non-reservation Indians, from participating in non-discretionary State administered programs.

Response. The Indian contract program does not preclude members of Indian tribes from participating in State administered vocational education programs. Conference Report 94-1701 (p. 215) states that the Indian contract program is not intended to relieve the States of their obligation to provide vocational education to urban Indians. No change is made in the regulation.

Sec. 105.211 *Review of applications.*

Comment. A commenter suggested that applications be reviewed by the National Advisory Council on Indian Education.

Response. While some programs administered under the Indian Education Act, Pub. L. 92-318, as amended, require review by the National Advisory Council on Indian Education (NACIE), the Vocational Education Act does not provide statutory authority for the review of applications by the NACIE. However, the NACIE was afforded an opportunity to review and comment upon the Notice of Proposed Rulemaking thereby allowing for input from the Indian community. It is the statutory responsibility of the Commissioner to provide for the review of applications. No change is made in the regulation.

Sec. 105.211 *Minimum points received by applications to be considered for funding.*

Comment. A commenter asked if applications should receive a minimum of 50 rather than 30 points to be considered for funding.

Response. The minimum number of points an application must receive to be considered for funding remains 30 points. The Commissioner feels that this lower minimum should result in a larger number of applications which may be considered for funding. No change is made in the regulation.

Sec. 105.211 *Technical review criteria.*

Comment. A commenter suggested that priority in contracting be accorded to vocational education programs which serve Indians in urban areas.

Response. The Act limits the eligibility of applicants to Indian tribal organizations which are eligible to contract under the Indian Self-

Determination and Education Assistance Act. Therefore, urban Indian groups are not a priority group in the regulation because the Act is written so that eligibility turns on whether an Indian organization is federally recognized under the Indian Self-Determination and Education Assistance Act. However, urban Indians are eligible to participate in the regular program. No change is made in the regulation.

Comment. A commenter suggested that the regulation give consideration to the special cultural, legal, and socio-economic status of the Indian population. The commenter further suggested that program design and service delivery include: (a) the provision of basic skills training necessary to facilitate vocational training; (b) the provision of supportive services such as child care and transportation; and (c) the payment of stipends so that Indian people can afford to participate in training.

Response. Section 103(a)(1)(B)(iii) provides broad authority for the Indian contract program. Therefore, an applicant may request support for basic vocational skills training, supportive services, and stipend support. The applicant should respond to each of the technical review criteria. No change is made in the regulation.

Comment. A commenter suggested that the need section of an application should be based upon the tribe's economic development plan, including tribal manpower data.

Response. The need section of the application may include information concerning a tribe's economic development plan. However, this should not be the sole or major criterion in that the overall objectives for an economic development plan may vary significantly from the legislative intent of this Act. No change is made in the regulation.

Subpart 3 -- Training and Development Programs for Vocational Education Personnel

Leadership Development Award Program

Sec. 105.302 Length of award.

Comment. A commenter, wishing to assure an award period of adequate length to permit effective education for leadership development, recommended that Sec. 105.302(b) be amended to assure a minimum award period of at least 24 months to each approved applicant.

Response. The recommendation is not accepted because the expressed intent of the Congress eliminated the policy which in the past has sometimes limited the duration of leadership development awards to one year. Emphasis on a minimal commitment of 24 months would tend to weaken the effect of the present regulation which is addressed to an award period of 36 months. Furthermore, it is not believed to be in the best interest of the government or of the awardee to weaken in any way the requirement in Sec. 105.307 that the awardee perform satisfactorily and in accordance with the regulation. No change is made in the regulation.

Sec. 105.303 Equitable distribution.

Comment. Several commenters objected to the language in Sec. 105.303 that "the Commissioner will apportion leadership development awards equitably among the States..." for the reason that the word "apportion" gives the impression that the awards will be apportioned, by formula, in advance of receipt of applications. They recommended that the sentence be reworded.

Response. This recommendation has been accepted. Although the proposed regulation follows section 172(b)(4) of the Act closely, the language of Sec. 105.303 of the regulation is changed to make clear that there will not be a formula allocation of awards to the States.

Sec. 105.304 Post-doctoral study.

Comment. A commenter recommended specific prohibition of awards to post-doctoral students.

Response. It is possible that a person with the doctoral degree in engineering, or any other field, might seek to become a professional leader in vocational education. Although the Act and its legislative history do not address this point, it cannot safely be assumed that the Congress meant to preclude giving an award to such a person. No change is made in the regulation.

Sec. 105.304 Role of research.

Comment. A commenter recommended deletion of the phrase "or research" from paragraph (b), which would then read, "In order to receive a leadership development award the person selected shall enroll for full-time graduate study in a vocational education leadership...."

Response. The recommendation is accepted and the regulation is changed accordingly. Graduate study includes all of the employment categories suggested in the Act (e.g., administrators, supervisors, teacher educators, researchers, guidance and counseling personnel). Nothing in the Act warrants establishing the elements of study and research as mutually exclusive alternatives.

Sec. 105.305 Graduate-level study.

Comment. A commenter pointed out that although in H.R. Report No. 94-1085, p. 54, the Congress advises the Commissioner to solicit recommendations "from graduate schools offering these programs," the regulation reads "from representatives of vocational education programs in institutions of higher education." The commenter notes that the programs might or might not be at the post-baccalaureate or doctoral level.

Response. The point is well taken. However, the Commissioner prefers not to make the suggested change in order to permit and encourage solicitation of recommendations from all levels of instruction, including, the doctoral level. No change is made in the regulation.

Sec. 105.305 Role of the State board.

Comment. A commenter finds paragraph Sec. 105.305(b) to be "extra-statutory and misrepresentative of H.R. Report No. 94-1085" in that it gives excessive authority to the State board.

Response. The Commissioner was keenly aware of the criticism expressed in H.R. Report No. 94-1085 and took it fully into account in drafting the regulation. In light of the legislative history, the regulation is designed to obtain advice from the State board and to use the board as a conduit for securing advice from the "other agencies." On the other hand, the total role of the State board has been changed because the applications are sent directly to the Commissioner (rather than through the State boards, as in previous years) and will be reviewed independently by the Commissioner's designees in the Office of Education. For these reasons, the recommendation to revise the regulation is not accepted.

Sec. 105.305 Advice from others.

Comment. Several commenters objected to having the State board forward to the Commissioner only a summary of its own advice and that of the "other agencies" and "representatives," on the grounds that the authority to prepare such a summary increases unduly the role of the State board.

Response. In order to clarify the role of the State board, the regulation is revised to require the State board to forward the complete statement of advice from each such agency and representative.

Sec. 105.307 Part-time employment.

Comment. A commenter wanted the part-time employment referred to in Sec. 105.307(a)(3) to be limited to 50 percent of the awardee's time, and wanted a regulation to clarify how approval for part-time employment is obtained.

Response. Experience with the leadership development award program in previous years shows that there are many patterns of part-time employment in terms of hours per day or week and number of weeks or months. It has not seemed feasible to attempt to foresee them all and regulate accordingly. Therefore, the matter will be handled as in the past, by individual request from each participating institution to the Commissioner and review of each request on its merits. No change is made in the regulation.

Sec. 105.309 Application review criteria.

Comment. Many persons took exception to the proposed criteria for judging applications. One wanted the weights of the criteria changed to favor younger, less experienced applicants. Several commenters wanted more weight given to evidence of intellectual ability as shown by academic achievement. One pointed out the similarity of criteria (b) Leadership potential and criterion, and (e) Human relations skills, which would tend to favor certain candidates. Several wanted the Commissioner to set minimum levels which must be attained for each criterion. Several perceived that the proposed criteria would result in discrimination against women and racial minorities, and would favor older persons with "stereotyped" accomplishments. One commenter recommended that in paragraph (g) of Sec. 105.309 special consideration be given to women. One commenter urged elimination of the entire section on review criteria.

Response. Since the Commissioner must review all applications and must, of necessity, use criteria for that purpose, it is the policy of the Office of Education to publish the criteria in advance.

Most of the other comments and recommendations relate to the weight assigned to each of the criteria. In view of the comments, a reconsideration of the weighting has resulted in several revisions set forth in the final regulation.

The weight given to evidence of academic ability has been increased, and the weight given to communication skills has been reduced. The criterion (e) Human relations skills has been eliminated as such and included under criterion (b) Leadership potential as skill in interpersonal relations.

Neither the Act nor its legislative history provides any support for weighting of the criteria to favor either younger or older persons. Consequently, the recommendations in this regard were not accepted.

Sec. 105.309 Application review criteria-academic ability.

Comment. A commenter recommended changing criterion (a) Academic ability to require the applicant to submit transcripts of grades earned in college, including graduate courses, instead of leaving this submission to the option of the applicant. The same commenter suggested that item (3) of the same criterion be deleted, on the grounds that skill aptitude tests are not given at the graduate study level.

Response. The recommendation to require submission of transcripts is accepted and the regulation changed accordingly. A record of the applicant's grades is indispensable for proper review of his or her qualifications. The second recommendation, to delete the item referring to skill aptitude test, is not accepted, because submission of such information is optional, and because the applicant's scores on such tests, irrespective of when the tests were taken, is evidence of the applicant's abilities.

Sec. 105.310 Number of participating institutions.

Comment. A commenter recommended that the number of approved institutions be limited to twenty. The commenter saw this as a means of helping to assure that only institutions with highest quality doctoral level programs would be assigned leadership development awardees. The recommendation was perceived also as a way to assure a "critical mass" of awardees at each participating institution. A commenter with the same concern wanted the number of awardees per institution to be no fewer than ten and no more than twenty.

Response. While these concerns are shared by the Commissioner, Sec. 105.310 was not made more specific because of the need to accommodate possible fluctuations in the level of funding allocated to this program. It is believed that, by judicious use of the right to redistribute award recipients among approved institutions, the effect desired by both commenters will be achieved, whatever the level of funding of the program. No change is made in the regulation.

Sec. 105.311 Comprehensive graduate programs.

Comment. A commenter recommended that a participating institution should be required to offer at least four doctoral programs in supporting technical disciplines of agriculture, business administration, engineering, health sciences, and home economics, plus doctoral level programs in sociology, psychology, computer science, philosophy, and an area of "communications." The same commenter recommended that the regulation require a much broader, more comprehensive graduate program of vocational education than is now stipulated.

Response. The recommendation is not accepted. Despite the desirability of the recommended program, to require such a program would exclude from participation in the leadership development program many of the institutions which have already demonstrated their capabilities for training leaders. In setting the standards presently required in the proposed regulation, the Commissioner has in mind first the interest of the student awardees, who will legitimately have preferences among institutions, in respect to distance from their present homes, etc. The Commissioner's decision to make no change in the proposed requirements for eligibility of institutions is based also on the grounds that more restrictive criteria for eligibility would tend to enmesh the leadership development program unduly into the specific doctoral requirements of traditional technical fields. No change is made in the regulation.

Vocational Education Certification Fellowship Program

Sec. 105.431 Source of funding.

Comment. A commenter advised against having the certification fellowship program "compete for funds" with the leadership development program, and recommended that the former program be supported with funds provided to the States through Section 135 (Sec. 104.771 of the regulation). The commenter reasoned that the need for leadership development awards would so lessen the "critical mass" of awardees as to lose the benefits of group interaction.

Response. Funds for both the State-administered Vocational Education Personnel Training (Secs. 104.771 - 104.776) and the Commissioner's two discretionary programs, Leadership Development (Secs. 105.301 - 105.312) and Certification Fellowships (Secs. 105.431 - 105.443), are authorized by Section 103 of the Act. Section 103 requires that a specified portion of the appropriated funds be reserved for use by the Commissioner and that the balance be allotted to the States. The Commissioner's portion and the States' portion cannot be modified without a Congressional amendment. Therefore, funds available for the State-administered part under Section 135 cannot be used to support the Commissioner's Vocational Education Certification Fellowship Program. No change is made in the regulation.

Sec. 105.431 Teacher or educators.

Comment. Two commenters recommended that in Sec. 105.431 the term "vocational educator" should be changed each time it occurs to "vocational teacher."

Response. Although there is merit in the suggestion for use of the more widely used term, teacher, the recommendation is not accepted. The Congress used "educator" in the statute, and without compelling reasons to the contrary, the Commissioner prefers that the regulation use the terminology of the statute. No change is made in the regulation.

Sec. 105.431 Emphasis on shortage of teachers.

Comment. A commenter recommended that Sec. 105.431(a) be changed to read "...if those teachers have skills and experience in vocational fields for which there is a need for vocational teachers and for which they can be trained...." The rationale for adding the clause for which there is a need for vocational teachers is that there are some fields of vocational education which have a surplus of teachers and for which no additional ones should be trained. The commenter wanted the same change in Sec. 105.432(a)(1), for the same reason.

Response. The recommendation is accepted. Although the statute does not require that there be a need for vocational teachers in reference to applicants for fellowships who are certified teachers, it does contain this requirement with respect to applicants who are employed in industry. That both classes of applicants should be treated alike in this respect is supported at two points in the statute: first, section 172(c)(1) states that the fellowship program exists "in order to meet the need to provide adequate numbers of teachers..." and thereby establishes the overall criterion of need; and second, section 172(c)(7) requires the Commissioner to determine, annually, the areas of teaching where there is need of additional teachers and to award the fellowships, preferentially, for study in those areas. The amendments will help to assure that the limited funds available to the fellowship program are used where they are most needed.

Sec. 105.432 Categories of fellows.

Comment. A commenter advised that in paragraph (a) of Sec. 105.432 the word "including" be changed to "other than" on the grounds that if a person has already been certified to teach vocational education, there is no need for additional training.

Response. There is nothing in the statute or its history to suggest that a person who has been a teacher of vocational education in a field where there is no longer employment could not apply for a certification fellowship in order to be able to work in a field where there is need for teachers. Therefore, no change is made in the regulation.

Comment. Another commenter urged that the parenthetical expression in paragraph (a) of Sec. 105.442 be changed to read "(including other thirteenth and fourteenth year programs)." The rationale was that there are hundreds of educational programs at the thirteenth and fourteenth year levels which are not in community or junior colleges and where there are teachers in a variety of fields who should be eligible for consideration as applicants for certification fellowships.

Response. The recommendation is accepted. It seems reasonable to include as potential beneficiaries teachers in all programs at the thirteenth and fourteenth grade levels, rather than only those designated as junior or community colleges. The recommendation is particularly valid because many of the "other" programs are in technical and vocational education. The regulation is changed accordingly.

Sec. 105.434 Role of the State boards.

Comment. A commenter feared that State boards might be inclined to favor certified teachers, and recommended therefore that a more objective procedure be adopted for reviewing applications.

Response. All applications will be objectively reviewed by the Commissioner, who customarily uses teams of persons drawn from both inside and outside the Office of Education for this purpose. The review by the State board (with advice from the State advisory council and other agencies and representative individuals) will provide valuable additional input to the Commissioner's review of the applications. No change is made in the regulation.

Sec. 105.434 Advice from others.

The recommendation regarding Sec. 105.305(b), that the State board should transmit to the Commissioner the full statements of advice about applications rather than a mere summary of that advice, was found to be equally applicable to the certification fellowships program. Accordingly, Sec. 105.434(b) is amended to correspond to the changes made in Sec. 105.305(b).

Sec. 105.440 Eligibility of institutions.

Comment. A commenter asked generally about the difference in stringency of criteria for eligibility of institutions to participate in the Leadership Development Program and the Certification Fellowships Program.

Response. The requirements for institutional participation in the Leadership Development Program (Sec. 105.311) are for work at the level of graduate study and are therefore much more demanding than the requirements for the baccalaureate level fellowships program.

Sec. 105.441 Priority to areas of need.

Comment. A commenter noted the omission in the regulation of the language in Section 172(c)(7) which requires the Commissioner to give priority in the awarding of fellowships to those which are focused on the designated areas of need for vocational education teachers. The commenter requested that the omission be corrected.

Response. In view of the omission, the recommendation is accepted. Section 105.441(a) is amended by the addition of this language: "and will, to the maximum degree possible, award fellowships under Sec. 105.432 to applicants seeking to become teachers in the areas identified."

Sec. 105.442 Emphasis on areas of need.

Comment. A commenter wanted Sec. 105.442(a)(2) amended to recognize the emphasis on areas or fields of vocational education where additional vocational educators are needed (as required by Sec. 105.441). The amended text would read, "Past or current skills and experiences in the vocational field(s) in which there is a need for additional educators and...."

The same commenter requested the addition of an item (3) to Sec. 105.442: "inability to find employment in his or her field of previous certification." The rationale was that Section 172(c)(1) includes that qualification, which must therefore have been omitted by inadvertence.

Response. Both recommendations are accepted. The change in Sec. 105.442(a)(2) serves to emphasize the requirement of Sec. 105.441 of the regulation, and a new subsection (3) under Sec. 105.442(a) has been added which reads "inability to find employment in his or her field of previous certification."

Sec. 105.443 Emphasis on the handicapped.

Comment. A commenter recommended that the application review criterion related to national need (paragraph (e) of Sec. 105.443) be strengthened by adding special education for the handicapped to paragraph (e) of Sec. 105.440 as a part of the undergraduate program of vocational education.

Response. The Act requires that the undergraduate program of vocational education have adequate support services and disciplines, but does not go beyond suggesting which support services and disciplines shall be included. Since special education for the handicapped is a critical program element, the recommendation is accepted, and Sec. 105.440(e) is changed accordingly.

Sec. 105.443 Additional review criteria.

Comment. A commenter recommended that a fourth category, "women," be added to the list of groups meriting special attention under paragraph (e) of Sec. 105.443, National need.

Response. Because of the strong emphasis in the Act on eliminating sex bias and sex stereotyping, the recommendation is accepted. The initial sentence of the paragraph is modified to read "...with particular reference to the elimination of sex stereotyping and to working with the following populations." Further support for this change is found in Sec. 105.441, which provides that the Commissioner will identify areas of teaching in vocational education where there are or will be shortages of personnel. Also, a reasonable assumption may be made that there is a shortage of women teachers and of persons capable of teaching women in many areas of vocational education.

Comment. A commenter asks that a fourth category be added to paragraph (f) of Sec. 105.443 to favor applicants who desire to be trained in a "non-traditional" teaching field.

Response. The recommendation is accepted. H.R. Report No. 94-1085, p. 55, supports this non-traditional emphasis which may be interpreted to mean women (or men) teaching in fields traditionally reserved to the other sex, and also to mean any person teaching in a new field or a field not commonly taught. The new fourth item has been added to Sec. 105.443(f) which reads as follows: "(4) The applicant's intention to become certified in a vocational field not traditionally open to persons of the applicant's sex, or to become certified in a new field or one not commonly taught."

Sec. 105.443 Weighting of review criteria.

Comment. Two commenters urged that the weight assigned to criterion (a) Academic ability be increased to 30 points and the weights for criterion (b) Vocational skills be increased to 40 points, with corresponding reductions in the weights assigned to other criteria. The rationale was that criteria (a) and (b) are by far the most important.

Response. Due to the overall importance of criteria (a) and (b), the regulation is revised to increase criterion (a) to 25 points and criterion (b) to 35 points, and criterion (c) Communication skills is reduced to 15 points.

Subpart 4 -- Emergency Assistance for Remodeling and Renovating of Vocational Education Facilities

Sec. 105.502 Eligible applicants for emergency assistance for remodeling.

Comment. Commenters indicated that the legislative history does not sustain the argument made in page 18549 of the preamble to the NPRM that the bill, as enacted into law, was expanded to include all LEAs as eligible applicants; to the contrary, they maintain that only LEAs "in urban and rural areas" are eligible and recommend that Sec. 105.502 be amended accordingly.

Response. The recommendation is accepted. Congressional intent indicates that only urban and rural LEAs are eligible under this program, and that suburban LEAs are not eligible. Section 105.502 is amended to limit eligibility to LEAs in urban and rural areas and definitions on "urban" and "rural" have been added. Since these definitions apply only to the emergency facilities program, they are not repeated among the definitions of general applicability in Appendix A.

Sec. 105.504 Functions of the State board in relation to applications for emergency assistance for remodeling.

Comment. A commenter asked what the State board must do in relation to applications by LEAs for emergency assistance for remodeling and renovation. The commenter questioned whether the State board makes the decision on funding in the State and suggested that the State board's functions be specified in the regulation.

Response. Section 193(a) of the Act requires that the LEA send its application to the Commissioner through the State board. This requirement is repeated in Sec. 105.504 of the regulation. Section 193(a) of the Act requires that the application contain "such other information as the State board determines to be appropriate." This requirement is repeated in Sec. 105.503(g) of the regulation. Thus, the Act and the regulation require the application to be sent to the State board and require that when the application is sent on by the State board to the Commissioner, it contain whatever additional information the State board considers necessary. The State board should review the application and ask the applicant to add to its application any information which the Commissioner will need for decision. The decisions on awards must be made by the Commissioner. Since Sec. 105.503(g) follows the Act and gives the State board wide leeway in requesting any additional information it considers appropriate, no change is made in the regulation.

Sec. 105.505 Emergency assistance for remodeling.

Comment. A commenter asked what is meant by "emergency assistance for remodeling" and whether the program is limited to assistance after a natural disaster or to assistance for renovation where local tax efforts have been insufficient.

Response. The program of "emergency assistance" is not limited to assistance for remodeling after a natural disaster. The program is a special four-year program of assistance for remodeling in urban and rural areas which was added after Congress heard testimony of "the inadequacy of facilities in urban and rural areas." (Senate Report No. 94-882, p. 88.) As to assistance where local tax efforts have been insufficient, section 193(b)(1) of the Act stresses as the first criterion the need for Federal assistance. Applications will, under Sec. 105.505, be ranked according to the relative need for assistance as determined by the criteria in Sec. 105.505(b). No change is made in the regulation.

Sec. 105.505(b)(8) Criteria for award of emergency assistance for remodeling.

Comment. Commenters suggested that criterion (8) in Sec. 105.505(b) for review of applications submitted to the Commissioner for emergency assistance for remodeling should be deleted, five points should not be given for evidence that the proposed facilities "complied with the law and did not result in sex discrimination or bias against the handicapped."

Response. The recommendation is accepted. Criterion (8) is deleted and the five points are added to criterion (1), giving a maximum of 17 points for evidence of the age or obsolescence of the facilities for which Federal assistance is sought. Since it is a requirement of law that educational facilities not discriminate on the basis of sex or discriminate against the handicapped, it is not reasonable to give five points for evidence in the application that these requirements of law have been met. For that reason, criterion (8) is deleted. Applications will be reviewed, of course, to make sure that the proposed remodeled facilities do not result in discrimination on the basis of sex or handicap.

Subpart 5 -- Bilingual Vocational Education

Sec. 105.604(a) Submission of applications.

Comment. A commenter suggested that in order not to delay the submission of applications they should be submitted simultaneously to the Office of Education and to the State Board for Vocational Education, and that the State board be given 30 days following the closing date for applications to submit its comments to the Office of Education.

Response. The comment is accepted. The procedure set forth in Sec. 105.604(a) is for the applicant to submit a copy of the application to the State board for comment. Since a copy would be submitted to the board, it was implicit in this regulation that the original application be submitted directly to the Commissioner. The regulation reflects this procedure. In addition, the regulation is amended to require that the State board submit its comments to the Commissioner within 30 days following the closing date for applications.

Sec. 105.611 Bilingual Vocational Instructor Training Program.

Comment. A commenter recommended that the Commissioner make an effort to simplify the various teacher training programs within the Vocational Education Act and also to develop an effective means of coordinating these programs with similar teacher training programs administered by the Office of Education. This commenter contended that, without simplification and coordination, American education will be confronted with overlapping and ineffective management.

Response. The Vocational Education Act contains three separate authorities for teacher training programs. The Vocational Education Personnel Training set forth in Sec. 104.771 is a State-administered program. The Bilingual Vocational Instructor Training Program in Sec. 105.611 addresses a specific need to improve the overall Bilingual Vocational Training Program. The Vocational Education Leadership Development Program in Sec. 105.301 allows experienced vocational educators to spend full time in advanced study of vocational education. In view of the fact that one program lies exclusively within the domain of the State, and the other two discretionary programs address separate objectives in -- as a general rule -- separate institutions, it is not feasible to consolidate or simplify the three programs. Therefore, no change is made in the regulation.

APPENDIX A

Definition.

Comment. One commenter strongly supported a comment recorded in response to the NOI that the definition of vocational education should be broadened to include guidance elements and thus reduce the need for funding guidance as a supportive service.

Response. While there is no merit in the comment, the definition of vocational education in the Act (Sec. 195(1)) does not include vocational guidance and counseling. No change is made in the regulation.

Appendix -- "Cooperative education."

Comment. A commenter recommended expanding the definition of "cooperative education" to add two requirements that the program:

(1) "employs and compensates student-learners in conformity with Federal, State, and local laws and regulations in a manner not resulting in exploitation of the student-learner for private gain, and

(2) "is conducted in accordance with written training agreements between local educational agencies and employers."

Response. While the recommendation raises two very important points, the definition of "cooperative education" comes directly from section 195(18) of the Act and is not changed. The recommendations are added as requirements in the Cooperative Vocational Education Programs in Sec. 104.531 as new paragraphs (c) and (d).

Appendix -- "Curriculum materials."

Comment. A commenter suggested as an alternative definition of "curriculum materials" the following:

"Curriculum materials" means instructional resources both print and non-print, used in any teaching and learning process designed to prepare persons for employment or to upgrade the competencies of persons previously or presently employed in any occupational field."

Response. While the proposed definition has much merit, particularly in not limiting curriculum materials to printed materials, the definition in the Appendix comes from section 195(19) of the Act with only slight modification. No change is made in the regulation.

Appendix -- "Financial ability."

Comment. A commenter recommended that a definition of "financial ability" be added, to define the term as used in section 106(a)(5)(B)(i) of the Act.

Response. The recommendation is accepted. A definition of "financial ability" taken from the House Report (H. Rept. No. 94-1085, p. 34) is added.

Appendix -- "Handicapped."

Comment. Many commenters objected to that part of the definition of handicapped which included "learning disabilities to the extent the disability is a health impairment," pointing out that most learning disabilities (LD) are not health-related problems at all, but are learning-related problems (perceptual handicaps, brain injury, dyslexia or developmental ophasis). Commenters recommended that the definition in the Appendix to the Vocational Education Act should conform to the definition in the Education of the Handicapped Act, Pub. L. 94-142 and the regulations thereunder.

Response. The Technical Amendments (Pub. L. 95-40) conformed the definition of "handicapped" in the Vocational Education Act to that in the Education of the Handicapped Act. The amended definition includes "specific learning disabilities" as a handicapping condition. The definition of "specific learning disabilities" will be consistent with the definition finally promulgated by the Commissioner under the Education of the Handicapped Act. It will be necessary to look to the regulations under the Education of the Handicapped Act as published in final form for the definition of "specific learning disabilities."

Appendix -- "High school."

Comment. A commenter recommended a definition of "high school" be added to replace that of "secondary program."

Response. The recommendation has been accepted by adding the definition of "high school program" and revising the definition of "secondary program" as follows:

"High school program" means vocational education for persons in grades 9 through 12.

"Secondary program" means vocational education for persons in secondary grades as defined by State law.

Appendix -- "Instructional technology."

Comment. A commenter objected that the definitions do not include a definition of "instructional technology" since instructional technology "is playing an ever increasing role in the armed services, industry, government, medicine and the whole of education." No proposed definition was included in the comment.

Response. While there are many terms which could be defined, the Appendix contains only definitions of terms which must be defined for interpretation of the Act or the regulation. A definition of "instructional technology" is not necessary for interpretation of the Act or regulation, and for that reason, is not added to the Appendix. No change is made in the regulation.

Appendix -- "Limited English-speaking ability."

Comment. Several commenters have recommended that a definition of "limited English-speaking ability" be added, to define in the Appendix the term as it is used in Secs. 104.303(b)(2) and 104.317(a)(2) as to the 20 percent set-aside part of which is used for persons of limited English-speaking ability.

Response. The recommendation is accepted. A definition of "limited English-speaking ability" (LESA) has been added in its alphabetical order in the Appendix. The definition is that used in section 703(a)(1) of the Bilingual Education Act, 20 U.S.C. 880b-1. This definition will explain the term as used in Secs. 104.303(b)(2), 104.313(a)(2) and 105.601.

Appendix -- "Postsecondary programs" -- certificate of completion.

Comment. Many commenters suggested adding to the definition of "postsecondary programs" those programs leading to a certificate of completion of hours of study or certificate of completion of a series of courses.

Response. The House Report (H. Rept. No. 95-1085, p. 48) indicates that Congress did not intend that persons working toward certificates of completion should be considered under the definition of "postsecondary programs." For that reason, the suggestion was not accepted. No change is made in the regulation.

Appendix -- "Secondary program."

Comment. A commenter urged that the word "usually" be dropped from the definition of "secondary" and that the grades be specified as "beginning with "grade 9 and ending with grade 12."

Response. The definition of "secondary program" has been rewritten to leave to determination by State law the span of grades considered as "secondary." A definition of "high school" has also been added to the Appendix.

Appendix -- "Vocational education" -- guidance.

Comment. A commenter strongly urged that the definition of vocational education should be broadened to include guidance elements and thus reduce the need for funding guidance as a supportive service.

Response. While there is merit in the comment, the definition of vocational education in the Act (Sec. 195(1)) does not include vocational guidance and counseling. No change is made in the regulation.

Appendix -- "Vocational instruction."

Comment. A commenter objected that the definition of "vocational instruction" does not include planning, assessment, and evaluation.

Response. Planning, assessment, and evaluation are not elements of the statutory definition of "vocational instruction." For that reason they should not be included in the definition of "vocational instruction" in Sec. 104.512 or in the Appendix. No change is made in the regulation.

U. S. GOVERNMENT PRINTING OFFICE : 1978 O - 258-056